NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

PARTNERSHIP AGREEMENT WITH NHS BOARDS

SCOTTISH EXECUTIVE

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1. EXECUTIVE SUMMARY

1.1 This Partnership Agreement between NHS Boards (including all Special Health Boards and Agencies) and NHSScotland CFS:

- states that CFS will comply with all UK and Scottish legislations
- gives the reasons why the role of CFS was expanded to cover all of the NHSScotland
- outlines the NHSScotland strategy for countering fraud
- explains the roles and responsibilities of the partners to this Agreement
- states the intention to deliver a change in culture within NHSScotland with regard to fraud
- clarifies the type of investigations CFS will undertake in partnership with Boards and their staff
- provides a Fraud Action Plan with details of how NHS Boards can undertake a pro-active approach to counter fraud and manage any internal enquiries into alleged fraud.

1.2 The Partnership Agreement forms a key element of the Scottish Executive Health Department's determination to reduce fraud against the NHSScotland to an absolute minimum, and keep it at that level.

2. COMPLIANCE STATEMENT - UK/SCOTTISH LEGISLATION

2.1 The CFS is part of the Common Services Agency (common name, National Services Scotland - NSS) for the Scottish Health Service. The NSS has a registered entry on the Information Commissioner's Register of Data Controllers, which covers the work of the CFS.

2.2 The CFS will ensure that information and intelligence passing between other organisations and the CFS is dealt with confidentially and processed in accordance with the Data Protection Act 1998.

2.3 The CFS will aim to ensure that data relating to living individuals will be as accurate as possible. The CFS will ensure that such data is held securely, in a publicly accountable manner and will be used for the purpose of the prevention, detection and investigation of fraud or other irregularities in relation to all services provided under the National Health Services (Scotland) Act 2000 and all relevant Codes of Practice, recognising the considerations of the Human Rights Act 1998.

2.4 The CFS will follow the NSS Code of Practice on "Protecting Patient Confidentiality", adhering to the Caldicott Principles.

2.5 All investigations undertaken by CFS investigators will be conducted in compliance with the Criminal Procedure (Scotland) Act 1995, the Regulation of Investigatory Powers Act 2000, the Regulation of Investigatory Powers (Scotland) Act 2000, the Data Protection Act 1998 and all relevant Codes of Practice, recognising the considerations of the Human Rights Act 1998.

2.6 Recognising the reality that it is only through access to information that the truth or otherwise of a suspicion of fraud can be determined, the CFS and the NHS Boards will work together to attempt to overcome problems in accessing information where appropriate and in the greater interest of countering fraud.

3. BACKGROUND

3.1 The Scottish Executive Health Department's (SEHD) December 2002 circular (HDL (2002) 88) noted that Scottish Ministers had decided to widen the role of the then Fraud Investigation Unit to cover fraud, other irregularities and corruption within and against NHSScotland (NHSS). As part of the re-focusing of FIU's counter fraud activities, the unit changed its name on 28 February 2003 to the NHSScotland Counter Fraud Services.

3.2 In addition, following a recommendation from the Surveillance Commissioner, Scottish Ministers decided that all NHSScotland work related to directed surveillance and covert human intelligence sources, carried out under the Regulation of Investigatory Powers (Scotland) Act 2000 RIP(S)A, for cases of potential criminal activity involving NHS fraud or other irregularities, would only be undertaken by the CFS.

3.3 The SEHD's Director of Performance Management & Finance suggested the creation of a Short Life Working Group with the remit to examine the most effective way of extending the role of the CFS. That remit also included the preparation of an options paper in respect of that extended role and an appraisal of each option and, as far as possible, the incorporation of the views of the wider Service.

3.4 At a meeting of the NHSS Directors of Finance on 1 October 2003, the options were discussed and there was general support for the principle of extending the fraud role of the CFS, although questions were raised on whether there were alternative ways to deal with the problem of fraud – possibly using enhanced internal audit measures. However, in November 2003, Scottish Ministers approved the CFS business case for a centrally based, professionally accredited team of specialists dedicated only to counter fraud work. Approval was given on the basis that, whilst the audit and counter fraud roles were complementary, and would work well together, they were separate specialisms. The Auditor General acknowledges this separation of functions.

4. THE NHSSCOTLAND COUNTER FRAUD STRATEGY

4.1 NHSS Counter Fraud Strategy is to provide a counter fraud service, which is comprehensive, integrated and professional.

4.2 The ultimate aim of all counter fraud work is to support improved NHS services. Stopping losses to the public purse helps ensure that money is deployed for the public good, as the taxpayer intended.

4.3 The ideal is a National Health Service with no fraud or corruption. However, with finite resources to apply to the problem, this is recognised as not being practicable. Therefore, the aim will be for an NHS where fraud and corruption is reduced to the minimum and where NHS staff, patients, contractors and the wider public regard fraud against the NHS as intolerable. Every area of fraud, embezzlement, theft (by fraud) or corruption (hereafter referred to as fraud or other irregularities) within the NHS must be tackled and all appropriate methods used to deal with it. There should not be any "safe" areas for fraud, although each instance will be dealt with appropriately.

4.4 The objective is to provide the best possible counter fraud service to NHSScotland through the provision by the CFS of a professionally qualified team who will:

- investigate and identify fraud and corruption in a nationally consistent, accountable and pro-active manner;
- undertake patient exemption checking in a fair and effective manner;
- develop an anti-fraud culture within the NHS through publicity and education;
- produce counter fraud "best practice" guidelines in co-operation with NHS Boards and their auditors;
- work on behalf of, and in co-operation with, all NHS Boards.

4.5 The CFS are tasked with working with NHSScotland to:

- reduce fraud by staff, contractors and patients in the NHS to an absolute minimum by the deterrence, prevention, investigation and detection of fraud, as well as the creation of an anti-fraud culture through pro-active and reactive methods;
- put in place arrangements to hold fraud and corruption at a minimum level permanently;
- recover stolen monies and apply appropriate sanctions where fraud has not been prevented;
- increase awareness about the consequence of fraud and corruption to the general public, NHS staff and contractors;
- release more resources to provide better patient care.

4.6 Tackling fraud is a shared responsibility. Consequently, NHS Boards will have a duty to provide all information required by the CFS and to play a full and active part, alongside the CFS, in pursuance of the aims set out above.

5. ROLES AND RESPONSIBILITIES

5.1 NHS Boards

5.1.1 Every NHS Board, through its Accountable Officer, is responsible for ensuring that an effective system of internal control is maintained and operated. Accountable Officers remain responsible for countering fraud within their Board.

5.1.2 Accountable Officers are required to have adequate arrangements in place for the prevention and detection of fraud. In line with central guidance, these arrangements should encompass robust systems of preventative and detective controls to reduce the risk of fraud and contribute to the promotion of an anti-fraud culture. Where detected, all specified offences (see Appendix VI) must be reported to the CFS regardless of who the suspect or victim is, or the actual value of the alleged loss. The Accountable Officer should ensure that systems are put in place to notify the Counter Fraud Service of all reports of fraud and other irregularities, so that a central database may be maintained (see Section 7 – Reporting). The Accountable Officer should also use the CFS to investigate alleged fraud involving patient or endowment funds.

5.1.3 NHS Boards will be made aware of any allegations through the Director of Finance or Chief Internal Auditor. Such allegations may have originated internally or may have been communicated to the Director of Finance/Chief Internal Auditor by the CFS, where the CFS have received a report of suspected fraud or other irregularity from any source other than the Board.

5.1.4 NHS Boards shall nominate a senior officer (Fraud Liaison Officer – FLO) as liaison officer for countering fraud. The FLO will liaise with the CFS on all matters relating to NHSS fraud or other irregularities and will co-operate with pro-active enquiries. The FLO will have a duty to report, on the Board's behalf, all allegations of fraud and other irregularities to the CFS, and to decide with them whether the allegation will be taken forward for potential criminal prosecution, and/or as a disciplinary or civil case.

5.1.5 After notification of an alleged specified offence, consultation will take place between the FLO and the Chief Internal Auditor (where the FLO is not the Chief Internal Auditor - CIA), acting on behalf of the Accountable Officer, and the CFS to determine who should undertake the investigation. Where there is a difference of opinion as to which body should investigate the case, the Accountable Officer will have the final decision. All investigations will be undertaken on behalf of the Accountable Officer, and formal communication and reporting structures and timetables will be established.

5.1.6 Where following consultation between the FLO and the CFS, it is determined, that an investigation will be undertaken which will result in a referral of an employee for criminal and disciplinary proceedings, the matter will be investigated by the CFS. Where it is decided that no criminal proceedings will be undertaken, but that disciplinary sanctions are to be

sought, the investigation will be conducted internally, normally by Internal Audit and Human Resources staff (see Appendix V for the Human Resources Protocol).

5.1.7 Responsibility for any necessary actions based on findings and recommendations from the CFS lies with NHS Boards. See Appendix II for the full Reactive Operational Protocol.

5.1.8 The Counter Fraud Action Plan (see Appendix VII) details NHS Boards' responsibilities in respect of co-operating with the CFS pro-active and counter fraud culture programmes. NHS Boards have a duty to adopt and implement the Counter Fraud Action Plan.

5.1.9 NHS Boards shall nominate either the FLO or another officer to take responsibility for distributing all reports and other communications from the CFS.

5.2 Internal Audit

5.2.1 Internal Audit will review, appraise and report on the extent to which NHS assets are safeguarded from loss of any kind arising from fraud and other irregularities.

5.2.2 Internal Audit will be responsible for undertaking a systematic review of the internal controls that support the deterrence of fraud activity.

5.2.3 Internal Audit will examine systems and controls to detect areas of vulnerability and to make recommendations to Management to amend these as required.

5.2.4 The Chief Internal Auditor, if nominated as the NHS Board's FLO, has a duty, on the behalf of the NHS Board, to report all cases of alleged fraud and other irregularities to the CFS and to determine with them the appropriate course of action.

5.3 Counter Fraud Services

5.3.1 The CFS provides a central resource for the detection, investigation, reporting and recording of all instances of fraud, corruption and other irregularities. The CFS will provide a full, professional counter fraud service to all parts of NHSScotland and will carry out all patient exemption checks on behalf of NHS Boards. The CFS has the status of a Specialist Reporting Agency to the Crown Office and Procurator Fiscal Service. This means that the CFS is empowered to report cases for prosecution without recourse to any other Agency.

5.3.2 The CFS, in partnership with the NHS Board, will work actively to promote an anti-fraud culture so that NHS staff, patients, contractors and the wider public will come to regard fraud against the NHS as intolerable.

5.3.3 The role of the CFS is to:

- undertake a campaign of fraud deterrence and provide training and education in respect of countering fraud and corruption;
- undertake the work necessary to prevent and detect both primary and secondary care patient exemption fraud on behalf of NHS Boards, and to pursue vigorously all cases of suspected fraud to a conclusion;
- pro-actively detect and identify fraud, corruption and other irregularities against NHSScotland;
- investigate, on behalf of the NHS Boards, alleged cases of fraud, corruption or other irregularities by staff, patients, contractors or suppliers;
- undertake directed surveillance and covert human intelligence source management in relation to fraud or other financial irregularities in accordance with the Regulation of Investigatory Powers (Scotland) Act 2000;
- provide specialist advice to assist in the formulation of national and UK wide counter fraud policy, regulations and guidance;
- assist in the recovery of resources fraudulently or corruptly obtained from the NHS;
- undertake an annual measurement of the level of patient fraud, delivering proposals for reducing that fraud.

5.3.4 The CFS will submit an annual summary to NHS Boards, the NSS Board, Audit Scotland and the SEHD on the levels of patient, staff and contractor fraud identified through its investigative work, along with recommendations resulting from pro-active work. The CFS will also issue a quarterly report to all NHS Boards detailing new and current cases. NHS Boards will be kept fully informed, through their FLO, about individual investigations by regular updates and will be consulted regarding all major decisions. The CFS will maintain a central database of financial losses resulting from criminal action in respect of specified offences (see Appendix VI) and produce reports as required by NHS Boards, SEHD and Audit Scotland.

5.3.5 The Head of the CFS has a professional responsibility to the Accountable Officers of the NHS Boards for the conduct of investigations on their behalf and the provision of subsequent advice. Information concerning work carried out on behalf of a client body will only be disclosed out with the confines of the CFS with the express permission of the client body, except for disclosure to the Scottish Executive, other UK health counter fraud bodies where relevant, the appointed auditor, the Crown Office, or the Procurator Fiscal.

5.3.6 The CFS will investigate where there is a suspicion that the action of an employee may amount to the commission of a specified criminal offence. In such instances the NHS Board may also intend to refer the matter for disciplinary proceedings. All statements recorded by CFS can be used in disciplinary, civil and criminal proceedings. This may avoid the need to interview the witnesses twice. The CFS will not investigate where only

disciplinary action against employees is to be taken, however, they will undertake investigations in discipline cases involving FHS practitioners

5.4 National Services Scotland

5.4.1 The CFS is part of the NSS and the Head of the CFS is managerially responsible to the Director of Finance. The Chief Executive of the NSS is ultimately responsible for:

- the management of the CFS;
- the adequacy and quality of its work as defined within this Partnership Agreement;
- ensuring value for money in its operation; and
- the maintenance of effective working relationships with client bodies.

5.4.2 The staff of the CFS are employees of the NSS. All appointments to the CFS will be made by the NSS, with representation from the Steering Group (see below) on appointment panels for senior staff.

5.4.3 The governance arrangements by which CFS will work with NSS are as follows:

5.4.4 Although part of the NSS and managerially responsible to the NSS' Director of Finance, CFS will be professionally responsible to the Accountable Officers within whose areas the cases take place. The CFS Head of Service also has the right of access, in exceptional cases (those involving allegations against the most senior staff in a NHS Board, or cases directly involving the NSS), to the SEHD Director of Performance Management & Finance (the Chairman of the Steering Group).

5.4.5 CFS has a responsibility to keep the NSS informed, in general terms, of the work it is currently undertaking and of ensuring that consultations take place on the future business plans for the unit. In respect of the CFS budget, the NSS has direct responsibility and it follows that work planning and caseloads must be agreed with the NSS.

5.4.6 All summarised and anonymised reports to NHS Boards will also be forwarded to the NSS. However, in respect of individual cases, CFS will provide no information to the NSS, other than an "Advanced Warning Notice" in cases where there is likely to be press, political or clinical/professional interest.

5.4.7 CFS will carry out directed surveillance and use covert human intelligence sources (CHIS) in respect of fraud cases and will also carry out this work in certain instances at the request of an Accountable Officer. All such work is carried out under the Regulation of Investigatory Powers (Scotland) Act 2000, and is subject to audit by the Office of the Surveillance Commissioner. The Surveillance Commissioner's audit may be seen as assurance to NHS Boards and the NSS that CFS is conducting directed surveillance appropriately. The NSS will not be informed of any surveillance or CHIS work, but will receive the Surveillance

Commissioner's reports and will direct CFS to take any necessary action in respect of those reports.

5.4.8 The Service Auditor appointed to review the work done on behalf of the Service by Practitioner Services will carry out the audit of CFS' patient exemption fraud work. This will provide assurance to NHS Boards, from the NSS that the exemption fraud work is being carried out according to the protocol forming part of this Agreement.

5.4.9 The specialised nature of specific fraud investigations does not lend itself to normal audit. The audit of investigation work is still under consideration but will be carried out by one, or a combination of:

- the Counter Fraud & Security Management Service to supply an external, experienced, quality assurance team
- review by questionnaire to Procurators Fiscal of CFS cases submitted
- independent audit by appropriately qualified and experienced professional (e.g. retired Procurator Fiscal/Senior Police Officer etc).

5.4.10 The CFS will produce a set of performance indicators on an annual basis including:

- number of cases referred to Procurators Fiscal
- number of cases referred to discipline/Tribunal/professional body
- number of cases referred for civil recovery
- average time to complete case
- value of recoveries
- value of identified losses
- value of potential annual savings
- number of cases where initial response met the 2 working day deadline
- number of cases where assessment completed within 10 working day deadline
- number of patient exemption claims checks completed
- value of recoveries from patients
- number of penalty charges issued
- number of surcharges issued
- number of counter fraud presentations delivered
- number of counter fraud publicity leaflets issued
- staff awareness questionnaire results
- satisfaction questionnaire results.

5.4.11 CFS will produce an annual review of its activities, which will summarise the year's work. The review will serve to highlight and warn of different types of fraud and will be used, as far as possible, to promote the counter fraud message to a wide readership.

5.5 Practitioner Services and Information Services

5.5.1 As the paying agent for Family Health Services (FHS), the NSS will produce the statistical information required by NHS Boards on the payments made to contractors and on the activities supporting each claim.

A common, minimum Partnership Agreement is agreed between NHS Boards and the NSS covering:

- the FHS payments process
- NHS Boards' information requirements and the format and timetables for their provision
- the range of checks and controls to be carried out
- the arrangements for the identification and investigation of suspected instances of contractor fraud.

5.5.2 Where the NSS identifies potential fraud through the application of its internal control systems, it will simultaneously notify both the NHS Board and the CFS and assist with discussions to determine the best way forward in accordance with the NHS Board/CFS Partnership Agreement.

5.6 CFS Steering Group

5.6.1 The function of this group is to ensure that the CFS has a uniform modus operandi for all NHS Boards, and those consistent standards of fraud prevention and detection work are set and maintained for Scotland as a whole.

5.6.2 The Steering Group's membership will be drawn from NHSScotland bodies, making CFS accountable to it, as proxy, for all its NHSScotland stakeholders. It is chaired by the SEHD Director of Performance Management & Finance.

5.6.3 The Group agrees matters of operational policy concerning the fraud prevention and detection work of the CFS, but the remit of the Group does not extend to matters relating to the day-to-day management of the CFS, nor to strategic policy matters.

6. OPERATIONAL OVERVIEW

6.1 Pro-Active Operations

Anti-Fraud Culture

6.1.1 The CFS will work with the Service in promoting an anti-fraud culture within NHSS and the wider Scottish public with the aim of reducing fraud and safeguarding funds for patient care.

6.1.2 Despite NHS Boards adopting Fraud Policy and Response Plans and the work of auditors and other staff, there remains a lack of awareness of fraud in the NHSS. There is also a cultural belief that fraud against the NHSS is a victimless crime. It is necessary to combat these perceptions and to raise the awareness of the wider Scottish public and those within the NHSS that fraud is costing the Service millions of pounds each year.

6.1.3 CFS will be initiating a range of fraud awareness programmes to raise the profile of the counter fraud strategy with all NHSS staff, primary care contractors and suppliers of goods and services. The CFS Communications Team, in co-operation with NHS Boards, will promote such initiatives at local level.

6.1.4 Currently all NHS Boards are required to have a Fraud Response Plan. These will be superseded by Counter Fraud Action Plans (see Appendix VII). The premise that the Service simply reacts to fraud is no longer acceptable, and positive, pro-active actions are required.

6.1.5 In addition publicity will be targeted at relevant patient groups to provide information as to their exemption status and to how additional help and support can be obtained.

6.1.6 By bringing fraud to the attention of all NHSS staff, contractors and patients, we can raise awareness, alert people to the possibility of fraud and make people more observant and aware of others who are committing fraud.

Pro-Active Investigation

6.1.7 The NHSS has now been resourced to undertake pro-active counter fraud work and it is anticipated that this will have a significant impact in countering fraud. Consequently the CFS will seek out fraud pro-actively and will undertake exercises to identify areas of fraud including, but not restricted to:

- abnormal payment claims for treatment;
- atypical financial transactions
- abuse of contracts.

6.1.8 The team of pro-active investigators will use statistical analysis of data, local and UK intelligence, and an approach that complements that of audit, to uncover and investigate fraud and other irregularities. All investigation work will be undertaken in accordance with the provisions of Data Protection and Human Rights legislation. The Operational Manager (Pro-active) will liaise with FLOs and CIAs to ensure co-ordination of work and avoid duplication of effort. At all times the CFS will seek to avoid CFS investigators requiring access to NHS Board areas which have just been audited.

6.1.9 Close working relationships and communications will be established between NHS Boards, their internal audit teams and the Operational Manager (Pro-active). As noted earlier, the first point of contact for CFS will be the FLO.

6.1.10 When an area for investigation has been identified, case management will follow the Reactive Operational Protocol (See Appendix II).

6.1.11 As with any investigation, if a weakness is identified following a pro-active investigation, CFS will inform all NHS Boards of the potential need to amend their control procedures. The SEHD will also be advised in the event that they can review and identify any changes required to strengthen regulations.

6.1.12 Where the specified offence relates to a member of staff and the disciplinary route is to be followed, the NHS Board will investigate this and the CFS will be advised of the outcome for reporting purposes.

6.1.13 See Appendix I for the full Pro-active Operational Protocol detailing both proposals for creating an anti-fraud culture and for combating fraud by carrying out pro-active investigations.

6.2 Reactive Operations

6.2.1 All reactive investigations will be undertaken on behalf of NHS Boards and communication with the relevant NHS Board officers will be maintained throughout each investigation.

6.2.2 An agreed list of specified offences (See Appendix VI) will be used to determine which cases should be referred to CFS for investigation. Subsequent to the referral, a consultation will be held between CFS and the FLO to agree the way forward for each investigation.

6.2.3 Where CFS investigates a case of fraud, a final report outlining the criminal case will be issued to the NHS Board. Where possible, a range of civil or disciplinary actions and, if appropriate, an estimate of potential civil recoveries will be included in the report. In the case of criminal prosecution, a Standard Prosecution Report will be sent directly to the Procurator Fiscal by the CFS on behalf of the NHS Board. In any case where there is disagreement between the NHS Board and the CFS over the application of the full range of sanctions, then:

- the NHS Board's Accountable Officer must submit his/her concerns to the SEHD Director of Performance Management & Finance, copying the letter to the CFS Head of Service
- the CFS must submit its concerns to the NHS Board's Accountable Officer, copying the letter to the SEHD Director of Performance Management & Finance.

6.2.4 See Appendix II for the full Reactive Operational Protocol

6.3 Patient Exemption Fraud

6.3.1 The CFS will undertake a national programme of patient exemption checking which will include claims from both the primary and secondary care sectors. These claims relate to any treatment or service for which a patient claims exemption from charges or obtains financial benefit, such as falsely claiming reimbursement of travel expenses.

6.3.2 Random samples of claims will be extracted from relevant NHSS systems and split into different exemption categories to be checked with the relevant agencies.

6.3.3 When entitlement cannot be confirmed, patients will be contacted, asked for an explanation or payment and, if necessary, escalated through the Penalty Charge (Scotland) Regulations 1999.

6.3.4 Claims made by patients for services in the Secondary Sector will be checked in the same way as Primary Care claims, but before this can be initiated, a standardised claim form in which the patient gives consent to their information being checked needs to be devised and implemented across Scotland. CFS will work with NHS Boards to initiate and implement this.

6.3.5 When a standard form is adopted, exemption entitlement can be checked for claims for:

- hospital travel scheme
- wigs
- fabric supports
- prescriptions dispensed in hospital pharmacies for out-patients
- hospital dental treatment which includes dentures and bridges for out-patients
- hospital eye service claims
- community dental service treatment, which includes dentures and bridges.

6.3.6 The only claims to which the Penalty Charge Regulations do not apply are those made within the Hospital Travel Scheme, as these are not covered by the existing legislation. However, where entitlement to exemption cannot be confirmed, this will render the complete claim potentially fraudulent and these will be passed to the relevant Operational Manager for investigation.

6.3.7 See Appendix III for the full Patient Exemption Fraud Protocol

6.4 Public Interest Disclosure Act 1998

6.4.1 All NHSS Boards are required to provide a secure environment for staff, practitioners and patients to report suspected frauds.

6.4.2 This culture should encourage honesty and openness amongst all NHSS users and providers.

6.4.3 Guidance has been issued by Audit Scotland to organisations recommending what actions to take when staff suspect that fraudulent activity is being perpetrated. This guidance takes the form of booklets for managers and staff entitled ‘Don’t turn a blind eye’. Further information is also available on the Public Concern at Work website – www.whistleblowing.org.uk.

6.4.4 Many staff hold back as they see it as informing on a colleague and therefore an education process needs to be put in place. Staff should feel secure in taking the required action and should be familiar with what action can be taken. The route for reporting fraud may be within the NHS Board, but CFS will provide additional routes via their hotline and website. NHS Boards will be notified in accordance with the relevant operational protocol when direct contact is made through the CFS.

6.4.5 Clear guidance and policies need to be in place across the NHSS, supported by education, to encourage staff, practitioners and patients to report reasonable suspicions in the most effective way.

6.5 Regulation of Investigatory Powers (Scotland) Act 2000

6.5.1 The use of covert surveillance or covert human intelligence sources by public authorities is strictly limited by the provisions of the Regulation of Investigatory Powers (Scotland) Act 2000 RIP(S)A. The Common Services Agency is a named authority under RIP(S)A and, as such, only the Head of CFS, the Operational Managers and a nominated senior investigator may authorise directed surveillance and the use of covert human intelligence sources (CHIS) in NHSScotland.

6.5.2 As a result of the Scottish Executive's expressed intention to amend RIP(S)A to remove the powers of NHSS Divisions, Boards and Special Health Boards to grant authorisation under RIP(S)A, all cases of potential criminal NHS fraud or other irregularity (as listed in Appendix VI – Specified Offences) must be referred to the CFS. Where appropriate the CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of NHSS bodies. Where NHSS bodies are considering surveillance or the use of a CHIS in cases which do not involve fraud or other financial irregularities, such as public or staff safety or the prevention of disorder, they should contact the appropriate public body as outlined in HDL (2003) 30. This will normally be the relevant Police Force.

6.5.3 See Appendix IV for a description of the terms used and the full RIP(S)A Protocol.

7. REPORTING

7.1 Introduction

7.1.1 The CFS, with co-operation from NHS Board staff and auditors, will undertake to fulfil the information requirements of NHS Boards at local and national level for all areas covered by its remit. Reports will be reviewed at annual meetings with each NHS Board/Board Audit Committee to discuss these findings and to determine if any system improvements are required. Routine reports will be identical in content and timescales for all NHS Boards but CFS is committed to providing ad-hoc information to NHS Boards to meet specific requirements.

7.1.2 Quarterly meetings between the FLO and the CFS Operational Manager will ensure that progress on all aspects of counter fraud work is properly monitored.

7.1.3 A table providing details of routine reports is attached in Annex 1.

7.2 Fraud Reporting Categories

Contractors / Suppliers

7.2.1 Contractor / Supplier fraud is perpetrated by those who are contracted by an NHS Board to provide services to or on behalf of the NHS Board. Groups which fall into this category are:

- Primary Care Practitioners – dentists, GPs, opticians, pharmacists
- Contractors – professional consultants e.g. IT, project management etc.
- Commercial Suppliers – consumables, equipment, maintenance etc.

7.2.2 All investigations being undertaken by CFS will be managed through the Case Management System (CMS) and will be reported on a quarterly basis to NHS Boards.

7.2.3 The report will provide anonymised data and case histories on all investigations currently being undertaken and will name the specific operations/background investigations relevant to each individual NHS Board.

7.2.4 A summary of all investigations will be provided in the CFS Annual Review.

Patient Exemption Fraud

7.2.5 Patients perpetrate fraud against the NHSS by claiming exemption from NHS charges when they are not entitled.

7.2.6 The national programme of patient checking provides assurance to NHS Boards that a robust sample of patients is checked on a monthly basis.

7.2.7 Quarterly reports will be issued in conjunction with contractor fraud reports, by the middle of the month following each quarter end. These reports will be on an annual, cumulative basis and will show the number of cases carried forward, new, closed and proposed write off cases along with the appropriate values. In addition to giving individual NHS Board figures, an all-Scotland total will also be shown.

7.2.8 The final report for quarter ending March will have the annual information. This will also include, at Division or NHS Board level, a breakdown of the write off reasons and recoveries specific to each exemption category and service. In order to show that cases are not being continued for more than two accounting years, the CFS will show the commencement date of the oldest claim in the carried forward total.

7.2.9 At the end of January each year a report will be provided to each NHS Board extrapolating the results of routine monthly checking to estimate the levels of fraud/error for each category of exemption checked for the period January to December. Where NHS Boards believe that there is a material change in circumstances in the last quarter of the financial year, they may request from the CFS a further extrapolation for the 12 months to March.

7.2.10 A summary of all patient investigations will be provided in the CFS Annual Review.

NHSS Staff

7.2.11 The CFS will undertake criminal investigations into alleged fraud perpetrated by NHSS employees if that fraud results in a financial loss to the NHS Board or is perpetrated against patients. Not every case will be taken to criminal prosecution, with the likely value being taken into account when considering if this will be in the public interest. However NHS Boards and the CFS will take very seriously any breach of trust, and will in such instances press for criminal prosecution, regardless of value.

7.2.12 All investigations being undertaken by the CFS will be managed through the Case Management System (CMS) and will be reported on a quarterly basis to NHS Boards.

7.2.13 The report will provide anonymised data and case histories on all investigations, currently being undertaken and will name the specific operations/background investigations relevant to each individual Board.

7.2.14 A summary of all investigations will be provided in the CFS Annual Review.

7.3 Case Management System (Losses through Criminal Action)

7.3.1 All criminal acts, falling within the list of specified offences (see Appendix VI) which result in a loss of assets and/or funds belonging to, or under the stewardship of, the NHS will be reported to the CFS for recording in the CMS.

7.3.2 Information collated from the data will be reported to NHS Boards on a quarterly basis in an appropriate format – Annex 2 (format to be agreed).

7.3.3 Those cases, which are the subject of CFS investigation, will be reported in the Quarterly Investigation Report.

7.3.4 On an annual basis a summary of all information will be issued to NHS Boards, the Scottish Executive Health Department and Audit Scotland.

7.4 Annual Review

7.4.1 Full review of all CFS activities including:

- service auditors report

- investigation QA
- key performance indicator results
- annual statistics (including summary of all investigations)
- risk measurement
- fraud awareness surveys
- review of the year
- future plans.

Annex 1

Period of Reporting	Report Content	Data Used to Produce Report
Quarterly	- Patient Exemption Checking System – cumulative quarterly report commencing with the quarter ending June - Case Management System (CMS) – cumulative quarterly report commencing with the quarter ending June	- A count of all cases processed through PECS in the reporting quarter including all carried forward cases from the previous quarter - A summary of all investigations and a count of all incidents involving financial loss through criminal action processed through the CMS in the reporting quarter including – new cases, on-going cases, those referred to Procurator Fiscal/Central Legal Office, those referred back to the Board for action and cases closed in the quarter
January-December Report issued at end of January	- Patient Exemption Checking System – report for period January – December including the extrapolation of potential fraud based on claims paid against claims checked	- Dental and Ophthalmic claims paid January to December - Pharmacy claims paid November – October - Secondary sector claims paid January – December - PECS cases closed January – December
April – March Report issued mid April	- Patient Exemption Checking System – report for period April – March including cases recommended for write off with the reason and the cheque for recoveries - Case Management System (CMS) – report for period April – March	- PECS cases processed during April – March - A summary of all investigations and a count of all incidents involving financial loss through criminal action processed through the CMS in the reporting period including – new cases, on-going cases, those referred to Procurator Fiscal/Central Legal Office, those referred back to the Board for action and cases closed in the year

April – March Report issued mid June	- Annual Review	- An annual summary of: - Service Auditors Report - Investigation QA - Key Performance Indicators results - Annual statistics - Risk Measurement - Fraud Awareness Surveys - Review of the Year - Future Plans

Annex 2

The format of this report is to be agreed following further consultation.

8. AGREEMENT

8.1 Agreement

This Agreement is between Counter Fraud Services, a part of National Services Scotland and NHS …….

8.2 Service Undertaking

CFS will undertake, on behalf of the NHS Board, all aspects of counter fraud work as detailed in this Agreement.

8.3 NHS Board Responsibilities

These are as detailed in section 5 above.

8.4 National Services Scotland Responsibilities

These are as detailed in section 5 above.

8.5 Monitoring and Review Arrangements

A timetable of regular Performance Review Meetings will be established between CFS and the NHS Board. These meetings will take place annually and all aspects of CFS performance will be reviewed.

8.6 Partnership Period

The Partnership Agreement will run from 1 April 2004 to 31 March 2007. This Agreement will be an evolving document during this period and will initially be reviewed quarterly.

8.7 Escalation Procedures

Any dispute arising out of this Agreement should be resolved with the relevant CFS Operational Manager. If this process is unsuccessful the issue should be referred to the Head of Service. If necessary, matters should then be escalated to the National Services Scotland Director of Finance or Chief Executive and thereafter the SEHD.

…….	…….
Signed on behalf of …… NHS Board	Signed on behalf of Counter Fraud Services

Appendix Ia

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

PRO-ACTIVE OPERATIONAL PROTOCOL – Anti-Fraud Culture

CONTENTS

1. Introduction
2. Changing The Culture
3. Fraud Awareness
   - 3.1 NHS Staff
   - 3.2 Patients
   - 3.3 Primary Care Contractors
4. Working Together Protocols
   - 4.1 Charters
5. Communication Media
   - 5.1 Public Meetings/Conferences/Seminars
   - 5.2 Newsletters
   - 5.3 Bulletins
   - 5.4 Website
   - 5.5 Fraud Reporting Line
   - 5.6 Information Technology
   - 5.7 Meeting with Stakeholders
6. Communications Strategy
7. Expected Outcomes

1. INTRODUCTION

1.1 The NHS Boards' Accountable Officers have the responsibility for countering fraud within their areas. The NHSS CFS intends to work with the NHS Boards, giving them the tools to heighten awareness of fraud and to reduce it to a minimum. Where necessary, NHS Boards and the CFS will seek assistance from the Scottish Executive Health Department in the national promotion of counter fraud initiatives.

1.2 Commonly held perceptions that fraud does not exist, or that it is not material within the huge sums spent by the NHSS, or, indeed, that it is a victimless crime, need to be rooted out and replaced by a drive to ensure that all NHS funding goes to patient care. This must be effectively communicated to staff, patients and the wider Scottish public.

1.3 National initiatives will be implemented by CFS and it will work with NHS Boards to promote these at local level, with full support from the CFS Communications Team.

1.4 Fraud Action Plans will replace the Fraud Response Plans currently in place within all NHS Boards. The premise that NHSS reacts to fraud is no longer acceptable and positive, pro-active plans are now required.

1.5 By bringing fraud to the attention of all NHSS staff, contractors and patients, people can be alerted to the possibility of such fraud occurring and will therefore be more likely to notice and to know how to report it.

1.6 The aim of all of the proposed changes is to bring about a change of culture in respect of fraud against the NHSS, so that staff, contractors, patients and the general public regard it as intolerable.

2. CHANGING THE CULTURE

2.1 It is clear that the CFS cannot itself achieve the necessary culture change and must work with NHS Boards to make this happen. The CFS will propose a range of initiatives to counter fraud across all areas of the NHSS and will seek the co-operation of NHS Boards and their staff to use these initiatives to maximise the deterrence of fraud.

2.2 These initiatives include:

- Partnership Agreement
- Fraud Action Plans.

2.3 The Agreement itself and the new Fraud Action Plan will be the cornerstone of the NHS Boards' fight against fraud. The Fraud Action Plan to be used is attached in Appendix VII.

3. FRAUD AWARENESS

3.1 NHSS Staff

3.1.1 Fraud awareness surveys will be initiated across the service to measure the level of staff awareness of fraud and its impact on the NHSS.

3.1.2 Subsequently, Fraud Awareness Sessions will be held across various organisations within the NHSS to raise the profile of countering fraud, promote a counter fraud culture, and publicise the links to the CFS.

3.1.3 These sessions will be followed with further surveys to assess the effectiveness of the sessions and the level of awareness of staff.

3.2 Patients

3.2.1 Fraud awareness publicity for patients will need to produce significantly different messages:

- deterrence to those claiming fraudulently
- reassurance to those who are entitled to claim
- education for those who are unsure if and what they are entitled to claim for.

3.2.2 Deterrence will take several forms. Increasing the number of patient exemption checks will increase the awareness of CFS activities and more rigorous application of the Penalty Charge process will deter patients from claiming fraudulently.

3.2.3 Maximising local publicity in respect of individuals who are found to have been habitually claiming fraudulently, or high profile patients who unequivocally will not pay (as opposed to those who cannot pay), and who may, with the approval of the NHS Board in both these situations, be taken to Court.

3.2.4 Reassuring patients, who are entitled to claim but may be dissuaded from doing so by an aggressive publicity campaign, will require publicity about entitlements to be clear and specific.

3.2.5 This links to the educational aspect of publicity and communications, which will involve information leaflets for patients in specific categories including:

- leaflets in fresher packs for students
- letters sent to individual patients who receive particular benefits which do not passport into exemption from NHS charges but who may be entitled to help from another source
- information on websites for specific medical exemptions, e.g. Diabetes.

3.3 Primary Care Contractors

3.3.1 Primary Care Contractors, because of their position as independent contractors within NHSS, will receive publicity and educational materials specific to their area.

3.3.2 Posters and other aids providing exemption information for patients specific to each service will be developed and issued. CFS will deliver presentations and attend seminars and conferences for all contractor groups wherever and whenever possible.

3.3.3 It is also the intention to deliver presentations to all new Primary Care Contractors within their first year in practice. This will be achieved by close liaison with the Vocational Training Advisers and by establishing links with NHS National Education Scotland.

3.3.4 Teams of CFS staff will visit practices/shops to reinforce and provide advice and support for the Point of Dispensing, Treatment and Service checks thereby improving the first line checks for invalid patient exemption claims.

4 WORKING TOGETHER PROTOCOLS

4.1 Charters

4.1.1 Counter Fraud Charters will be agreed between CFS and organisations representing the staff, professional groups within NHSS and patients. These will initially be the clinical governing bodies, the Scottish Partnership Forum and patient representative groups.

5 COMMUNICATION MEDIA

5.1 Public Meetings/Conferences/Seminars

5.1.1 CFS will utilise every opportunity to deliver presentations and attend public meetings where countering fraud against the NHSS can be explained and publicised. NHS Boards and their staff will be encouraged to request CFS participation in meetings etc, where counter fraud input would be appropriate.

5.1.2 Links made with the professions through the signing of Charters will be used to gain access to seminars, conferences etc., again where appropriate.

5.2 Newsletters

5.2.1 CFS will produce regular newsletters aimed at specific groups and will contribute to local newsletters and magazines already published by NHS Boards.

5.2.2 Contractor newsletters, currently published by Practitioner Services, will provide an additional avenue for CFS to publicise the counter fraud message.

5.3 Bulletins

5.3.1 CFS will produce bulletins to alert NHS Boards to identified areas of fraudulent activity.

5.3.2 These bulletins will be issued on an ad-hoc basis as and when required and will be distributed to relevant personnel within the NHS Board.

5.4 Website

5.4.1 CFS website will provide a range of information about CFS, including:

- fraudulent activity
- exemption information
- Annual Reports/newsletters
- current news
- vacancies.

5.4.2 The website will also provide an additional avenue for staff, contractors and members of the public to report suspected fraudulent activity against the NHSS. The person reporting the fraud has the option to remain anonymous if they wish.

5.4.3 The website will be re-launched after a major re-design and will then be advertised on all leaflets and posters issued by CFS to promote visitors to the site.

5.5 Fraud Reporting Line

5.5.1 CFS will provide a free phone telephone number for anyone wishing to report suspected fraudulent activity against the NHSS. The person reporting the fraud has the option to remain anonymous if they wish.

5.5.2 The free phone number is 08000 15 16 28.

5.6 Information Technology

5.6.1 Technology will be used to promote counter fraud messages to all NHSS staff. Messages automatically generated when PCs are opened will deliver current and relevant information to all staff on counter fraud initiatives.

5.7 Meetings with Stakeholders

5.7.1 Regular meetings will be held with all stakeholders to ensure CFS communications meet expectations and deliver appropriate information.

5.7.2 These meetings will initially be held yearly but ad-hoc meetings will be arranged when local initiatives are being considered.

5.7.3 Issues, which will be discussed, include:

- publicity campaigns

- fraud awareness sessions
- patient targeted publicity
- publicising successful prosecutions.

6. COMMUNICATIONS STRATEGY

6.1 CFS will establish a strategy for internal and external communications. This will define the principles that will underpin the communications plan and procedures.

6.2 As this is a fundamental aspect of CFS work, this will be issued to stakeholders as a separate document.

7. EXPECTED OUTCOMES

7.1 In co-operation with the SEHD and NHSS Boards, CFS will deliver a pro-active programme of strategies and operational activities to raise the awareness of fraud and promote a culture change in people's perception of fraud against the NHSS.

7.2 These activities will result in a reduction of the levels of fraud or erroneous claims made for services provided by or to the NHSS.

7.3 This approach will be delivered in such a way that measurement can be made of the success of any targeted or generic initiative.

7.4 Outcomes of counter fraud initiatives will be published in the relevant media.

Appendix Ib

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

PRO-ACTIVE OPERATIONAL PROTOCOL – Investigations

CONTENTS

1. Introduction
2. Detecting Potential Areas Of Fraud
3. Identifying Areas For Pro-Active Investigation
4. Pro-Active Exercises
5. NHS Boards
6. Internal Audit
7. The CFS

1 INTRODUCTION

1.1 Following the Scottish Ministers' decision to widen the role of the CFS and extend its remit, a major part of the NHSS Counter Fraud Strategy is to pro-actively investigate and identify fraud. This will be achieved by a team of investigators, directed by a Pro-active Operational Manager, who will use statistical analysis of data, local and UK intelligence, and an approach which complements that of audit, to uncover and investigate fraud and other irregularities against NHSScotland.

1.2 CFS will foster close co-operation with internal audit departments, and at least some of this work will rely on such agreements being in place. The Operational Manager (Pro-active) will liaise with FLOs/CIAs to ensure that duplication of effort is avoided and that plans for accessing information in NHS Boards are drawn up which take into account the needs of internal and external auditors and the CFS.

2 DETECTING POTENTIAL AREAS OF FRAUD

2.1 The CFS will identify areas where fraud or other irregularities are likely to occur. This will be done by gathering intelligence from a number of sources such as:

- system weaknesses identified by Internal Audit departments throughout NHSS
- reports from Counter Fraud & Security Management Services in England, Wales and the Northern Ireland
- concerns raised by NHS Boards (annual questionnaires to Chief Executives)
- concerns raised by SEHD
- reactive investigations
- reports from Practitioner Services
- notifications received either through our Hotline or Website
- known areas that are susceptible to fraud because of the degree of trust involved i.e. staff travel claims.

3. IDENTIFYING AREAS FOR PRO-ACTIVE INVESTIGATION

3.1 The CFS will undertake a risk measurement exercise of any areas of potential fraud or other irregularities identified, and prioritise areas for pro-active investigation. In order to investigate the extent of fraud in the areas identified for investigation, the CFS will require access to data held by NHS Boards. This might include, but is not limited to, the following:

- details of Agency staff
- purchasing details
- payroll data
- staff travel claims
- patient travel claims.

3.2 Pro-active exercises may be undertaken nationally or within one NHS Board area in the first instance. Before a pro-active exercise is undertaken, the Pro-active Operational Manager will consult with the FLO(s)/CIA(s) about the exercise to be undertaken and the reasons behind the exercise. The CFS may also undertake a pro-active exercise where the NHS Board's Chief Internal Auditor has identified a system weakness and considers that this weakness might have been exploited to the extent that the NHS Board has suffered potential criminal loss.

4. PRO-ACTIVE EXERCISES

4.1 Pro-active exercises will be carried out by investigators who will, in co-operation with internal audit:

- examine data held by NHS Boards
- request information from NHS Board staff
- question patients about the health services they have received
- examine data held by Practitioner Services
- request information from practitioners
- question anyone who receives payment from or makes payment to NHSS.

4.2 In addition, as part of the aim to create an anti-fraud culture within NHSS, the CFS will disseminate information on suspected frauds. For example, as part of a pro-active exercise, the CFS may highlight details of a suspected fraud and measure the levels of claims/payments in respect of the suspected item before and after the CFS exercise.

4.3 As stated earlier, pro-active exercises may come about as a result of a reactive investigation. For example, where a reactive investigation highlights evidence to suggest that the fraud under investigation is widespread, the CFS will conduct a pro-active exercise to determine the extent of the fraud.

4.4 In a recent case investigated by the CFS, a Family Health Services practitioner was investigated following an anonymous allegation. During the course of the reactive investigation, it was discovered that a number of the practitioner's peer group were committing the same type of fraud. A pro-active exercise was carried out to identify the practitioners in Scotland who were most likely to be committing the same fraud, based on the details of their payment claims to Practitioner Services. Some of these practitioners will be selected for investigation, but the results of the pro-active exercise will also be advertised to deter other practitioners from committing the same fraud. NHS Boards and Practitioner Services will ensure that robust measures will be put in place to prevent further exploitation.

4.5 Following consultation with NHS Boards and their auditors, other pro-active exercises may be carried out by writing to staff or practitioners requesting their co-operation in an enquiry.

5. NHS BOARDS

5.1 In order to carry out pro-active exercises, the CFS will require assistance from NHS Boards. In particular the CFS will require access to information held by Boards, including their component hospitals, health centres, clinics and divisions. As already noted, such requests will normally be made through the FLO.

5.2 The CFS will seek the co-operation of NHS Boards in arranging presentations and the dissemination of information concerning the results of pro-active enquiries. On occasion, the CFS may also seek assistance from NHS Boards in analysing data and identifying trends, but this will only be required after full consultation.

6. INTERNAL AUDIT

6.1 In the normal course of their duties, internal auditors will identify system weakness, or potential system weaknesses, which might give rise to criminal losses through fraud. In such circumstances, internal audit should discuss such findings with the CFS with a view to a joint pro-active exercise being undertaken. CFS could then follow up with similar exercises on a national basis.

7. THE CFS

7.1 During a pro-active exercise the CFS will keep FLOs fully informed of the progress of the exercise. The frequency of updates will be agreed at the start of the pro-active exercise by the investigator and the FLOs concerned but, whatever the agreed frequency, any significant developments in the enquiry will be notified as they occur.

7.2 At the conclusion of a pro-active exercise, the CFS will submit a report, jointly with internal audit where appropriate, to each Board involved in the exercise, via the FLO. It will outline the investigation, the findings and any recommendations. One of the recommendations may be that a targeted investigation be undertaken, in which case the Reactive Operational Protocol applies (Appendix II).

7.3 The CFS will also submit reports jointly with NHS Boards to the SEHD, drawing attention to loopholes and potential system weaknesses.

Appendix II

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

REACTIVE INVESTIGATION OPERATIONAL PROTOCOL

CONTENTS

1. Introduction
2. Process And Decision Points
3. Form CFS1 – Report Of Suspected Fraud Or Other Irregularity
4. Forms CFS2a/b – Acknowledgement Or Notification Of Referral
5. Form CFS3 – Assessment Of Referrals
6. Form CFS4 – Outcome Of Scrutiny And Validation/Background Enquires
7. Investigation Process
8. Forms CFS5a/b – Advance Warning Notice
9. Form CFS6 – Closure Of Case

Annex 1

1. INTRODUCTION

1.1 This appendix sets out the responsibilities of NHS Boards and the CFS in relation to reactive fraud investigations.

1.2 NHS Boards will refer all instances of theft, fraud, embezzlement or other irregularities to the CFS, who will maintain a central database of all losses and investigate referrals of fraud, other irregularities and corruption as appropriate on behalf of NHS Boards.

1.3 The CFS Regional Teams, directed by Operational Managers, will deal with investigations. Cases of potential fraud and other irregularities may come to light in a variety of ways:

- CFS pro-active exercises (e.g. analysis of patterns or trends of NHS data)
- CFS initiated random patient checks
- CFS Website
- CFS Hotline
- Internal Audit
- NHS Employee (whistleblowing)
- Police
- Payment verification (FHS)
- third party information, (e.g. "tip-offs").

1.4 On receipt of a referral, the case will be allocated to the appropriate Regional Team as follows:

East Team	**West Team**
NHS Borders	NHS Argyll & Clyde
NHS Fife	NHS Ayrshire & Arran
NHS Forth Valley	NHS Dumfries & Galloway
NHS Grampian	NHS Greater Glasgow
NHS Lothian	NHS Lanarkshire
NHS Orkney	NHS Western Isles
NHS Shetland	NHS Highland
NHS Tayside	NHS Health Scotland
National Services Scotland	NHS 24
NHS Education for Scotland	National Waiting Times Centre Board (Golden Jubilee Hospital)
NHS Quality Improvement Scotland	State Hospitals Board for Scotland
Mental Welfare Commission for Scotland	
Scottish Ambulance Service	Property and Environment Forum

2. PROCESS AND DECISION POINTS

2.1 The following is a list of the forms used by the CFS in relation to referrals and investigations. A full explanation of each form and the stage of the referral/investigation to which it relates are given in this protocol. A flowchart to assist in following the process is given at Annex 1.

- Form CFS 1 Report of Suspected Fraud or Other Irregularity
- Form CFS 2a/b Acknowledgement or Notification of Referral
- Form CFS 3 Assessment of Referrals
- Form CFS 4a/b Investigation/No Investigation
- Form CFS 5a/b Advance Warning Notice
- Form CFS 6 Closure of Case.

3. FORM CFS 1 – REPORT OF SUSPECTED FRAUD OR OTHER IRREGULARITY

3.1 Reports of theft, fraud, embezzlement or other irregularities through criminal action should be made by the FLO to the CFS using Form CFS 1 within two working days of coming to the FLO's attention. However, where the fraud or other irregularity is believed to be significant or ongoing, the FLO should contact the relevant CFS Operational Manager as soon as possible, either by telephone or e-mail, to discuss the concerns prior to completing Form CFS 1.

Hotline/Website Referrals

3.2 The CFS will also accept referrals, either named or anonymously, via the:

- CFS Hotline - 08000 15 16 28
- CFS Website - http://www.show.scot.nhs.uk/fiu/index.htm.

Completing Form CFS 1

3.3 Sufficient information should be gathered to enable the FLO to complete Form CFS 1, but the referral should not be delayed because information is not readily to hand. No initial enquiries should be undertaken which could compromise any future investigation.

3.4 The details, which, as far as possible, should be entered on the Form CFS 1, are:

- the name of the person suspected of being involved and his/her job title, work location, NI number or Practitioner List number, date of birth, home address and telephone number;
- details of the fraud and the nature of the loss;
- any other relevant background information or details of relevant documentation;
- name, designation, telephone number and employing authority of the person reporting the fraud (this will normally be the FLO);
- in theft cases, whether or not the case has been reported to the Police and, if so, the date reported, Crime Reference Number and contact Police Officer (this will allow the CFS to ascertain the outcome of Police investigations).

3.5 Where more than one person is suspected of being involved, a separate Form CFS 1 should be completed for each individual. However the details of the suspected fraud or fraudulent scheme need only be entered once, on the top form.

4. FORMS CFS 2a/b – ACKNOWLEDGEMENT OR NOTIFICATION OF REFERRAL

4.1 All details of referrals will be recorded on the CFS central database. Referrals from FLOs will be acknowledged within two working days on Form CFS 2a (Acknowledgement of Referral). Referrals from all other sources will be notified to the FLO using Form CFS 2b (Notification of Referral) within two working days.

5. FORM CFS 3 - ASSESSMENT OF REFERRALS

5.1 The Operational Manager will review the referral and decide if further information or investigation is required. This will be done in consultation with the FLO (bi-partite consultation) and agreement reached on how the referral should be followed up. A Form CFS 3 (Assessment of Referral), setting out proposed action, will be forwarded to the FLO within 10 working days of the CFS receiving the referral.

5.2 At this early stage, if there is insufficient information available to justify a full investigation, initial background enquiries or Scrutiny and Validation may be carried out.

5.3 Form CFS 3 will be used to indicate that any of the above is to take place. Form CFS 3 will also be used to indicate that an investigation will take place, or will not take place, where there is sufficient information at the outset to make a decision.

Background Enquiries

5.4 In some instances it will be necessary for the CFS to carry out background enquiries to establish if there is any substance to the allegation(s). For example, examining data about payments, looking at trends, seeking advice from clinical advisers and considering local variations due to demography or inducement payments. Assistance may be sought from the FLO in helping with these enquiries. Background enquiries may be carried out for any referral regardless of whether it concerns the Family Health Services, NHS employees, or NHS suppliers/contractors.

Scrutiny and Validation

5.5 Referrals which come from Practitioner Services or the CFS Patient Claims Team and centre on a single patient disputing the details of the claim made by the practitioner, will result in Scrutiny and Validation (S&V) being used to determine if the incident which gave rise to the referral is a one off occurrence or not. S & V is utilised when a patient, who has been contacted as part of the random patient checking exercise carried out by the CFS Patient Claims Team (see Appendix III), claims to have paid, although their dental/ophthalmic/ prescription form was submitted showing that the patient was exempt. S&V is carried out by CFS, who will contact other patients processed as exempt, to

establish if there are other instances of paying patients being marked as exempt by the practice concerned.

Secondary Sector – Scrutiny & Validation

5.6 A similar method to a scrutiny and validation exercise may be appropriate in respect of patient fraud in hospitals. For example, where a patient alleges that he did not claim travel expenses and did not claim to be exempt. In that event the emphasis of the investigation shifts from potential patient fraud to potential NHS employee fraud.

5.7 In these circumstances, it will be necessary for the CFS to have access to other patient travel expense claim forms and associated documents. These source documents may assist in focusing the investigation on further internal enquiries. However, it may be necessary to contact other patients whose claims are similar, i.e. indicate the same type of exemption category and mode of transport, to confirm if the claims submitted in their name are authentic.

6. FORM CFS 4 - OUTCOME OF PAYMENT VERIFICATION/SCRUTINY AND VALIDATION/BACKGROUND ENQUIRIES

6.1 If, following a S&V exercise, a number of other patients indicate that any part of the claim made by the Practitioner is false (this is commonly referred to by the CFS as 'suspicion has crystallised') the NHS Boards will be notified of this.

6.2 Where it is established, following further enquiries as described above (i.e. suspicion has crystallised), that there is substance to an allegation; Form CFS 4a (Investigation) will be sent to the FLO recommending that a full investigation will be undertaken. If it is established that there is no substance to the allegation, Form CFS4b (No Investigation) will be sent to the FLO recommending that no investigation be undertaken and outlining the reasons for this.

Referral concerns an NHS employee

6.3 The Human Resources Protocol, which details how referrals concerning NHS employees should be dealt with, is attached at Appendix V.

Unable to establish which body investigates

6.4 If there is a difference of opinion as to which body should investigate the case, the Accountable Officer will have the final decision. It should be stressed that all investigations will be undertaken on behalf of the Accountable Officer and as such formal communication and reporting procedures have been established. These are outlined at Section 7 – Reporting.

7. INVESTIGATION PROCESS

Investigations

7.1 Where the CFS leads the investigation, overall responsibility for its direction will lie with the relevant CFS Operational Manager in consultation with the FLO. Once an investigation is underway, NHS Boards have a duty to respond to requests for information from the CFS promptly, as any unjustified delay may have an adverse affect on the case under the Human Rights Act 1998. NHS Boards should acknowledge requests for information from the CFS within 2 working days and provide the requested information within 10 working days. If the requested information cannot be provided within 10 working days, the FLO should contact the CFS without delay to agree a timescale for providing the information.

7.2 CFS investigations can rely heavily on evidence of patients and it is normal practice for the CFS to interview patients as witnesses. This may result in a patient contacting the NHS Board to seek further advice or reassurance about their role in the matter. Before undertaking any patient interviews, the CFS will ensure the FLO is notified, so that (s)he is in a position to brief any NHS Board staff that may be contacted by patients.

7.3 It is inevitable that some investigations will lead to NHS employees being interviewed as witnesses during the course of their working day. Disruption to normal operational effectiveness will be kept to a minimum in consultation with local managers.

7.4 There may also be occasions when CFS require secure accommodation for the short term storage of productions and NHS Boards should where possible make this available on request.

7.5 NHS Boards should be aware that during the course of an investigation it might be necessary to arrange for the police to detain members of staff. At the conclusion of an investigation, where there are reasonable grounds for doing so, it is CFS standard practice to interview all suspects under caution at a police station, and to tape record those interviews.

Criminal Proceedings

7.6 NHS Boards and the CFS may take a joint decision that it is not in the public interest to put a case forward for consideration by the Procurator Fiscal. In general, this will be on the grounds of low value. The NHS Board and the CFS must be prepared to justify such a decision to the Appointed Auditor.

7.7 The question of whether proceedings should be taken in any case put forward for consideration of criminal prosecution is a matter solely for the Crown authorities. It follows that no such suspected person should ever be told whether or not he would be prosecuted, except where such a decision has already been communicated by the Crown authorities.

7.8 Criminal investigations undertaken by the CFS will conclude in the production of a Standard Prosecution Report or a Subject Report for the Procurator Fiscal. The responsibility for reporting the case to the Procurator Fiscal remains with

the Accountable Officer of the NHS Boards. However, during the course of the investigation it may be necessary for the CFS to refer a case to the Crown Office or to a Procurator Fiscal, in order to seek a warrant or production order. In such cases, the decision as to whether or not a criminal investigation of the case will proceed will effectively pass to the Crown Office or the Procurator Fiscal concerned.

7.9 Should there be insufficient evidence to justify the application of criminal sanctions, CFS will take guidance from either the Procurator Fiscal or the Crown Office and will keep the NHS Board informed. Based on this advice, where the NHS Board and the CFS jointly decide that it is not appropriate to seek a criminal prosecution, the case will not be formally reported to the Procurator Fiscal.

7.10 At all stages the Accountable Officer (and any other relevant Officer) will be kept informed of developments on such cases, particularly those of a sensitive nature.

Internal Management Arrangements

7.11 Whether or not the Crown authorities determine that there are sufficient grounds on which to instigate criminal proceedings, it remains open to NHS Boards to consider invoking disciplinary and other relevant procedures.

7.12 The results of any CFS investigation may be of considerable benefit in civil or disciplinary proceedings instigated by the NHS Board. Internal management action must not, of course, prejudice any possible criminal proceedings. However, the CFS is likely to recommend early civil and disciplinary action (with the Procurator Fiscal's agreement). NHS Boards will be aware of the revised NHS Tribunal Regulations with regard to action against fraudulent family Health Service Practitioners.

7.13 As with all categories of loss, once the circumstances of a case are fully known, NHS Boards will require to take immediate steps to ensure that so far as possible these do not recur. To allow NHS Boards to take prompt action, the CFS will provide all relevant information within 10 working days.

7.14 NHS Boards should consider very carefully the treatment of any payment claims that arise from organisations or individuals who are under investigation, or against whom proceedings are being taken for suspected fraud or other irregularity. In doing so, it may be appropriate for bodies to seek to distinguish between claims similar to those which may have given rise to the earlier suspicions, and those made by the same person or organisation in totally different circumstances. The existence of contractual obligations will obviously also be important and in cases of doubt NHS Boards should seek legal advice.

Updates

7.15 CFS will ensure regular updates are forwarded to the FLO. These will normally be monthly but are subject to local arrangements with each NHS Board and will depend on the number of cases with each Board. For example, a NHS Board that has a number of different investigations ongoing may prefer to have an update at regular intervals detailing all investigations. This is further explained in Section 7 - Reporting.

8. FORMS CFS 5a/b - ADVANCE WARNING NOTICE

8.1 A Form CFS 5a (Advance Warning Notice – Execution of Warrant) or Form CFS 5b (Advance Warning Notice – Suspect Interview) will be sent to the FLO prior to significant developments i.e. execution of warrant, suspect interview/detention/arrest. This will be sent in strictest confidence 3 working days before the event is due.

9. FORM CFS 6 - CLOSURE OF CASE

9.1 At the conclusion of an investigation, and after all proceedings have taken place, the CFS will send Form CFS 6 (Closure of Case) to the FLO which will indicate that the case is to be closed and detailing the outcome of the investigation. Where a case is to be referred to the NHS Board for further action, the CFS will send a detailed report to the NHS Board outlining the reasons for the referral back to the NHS Board. The NHS Board will also be informed of any financial recoveries made by the CFS and the outcome of any criminal action.

9.2 Any monies recovered by CFS in respect of fraud cases will be banked and recorded in a suspense account.

9.3 The recoveries will be disbursed to NHS Boards as follows:

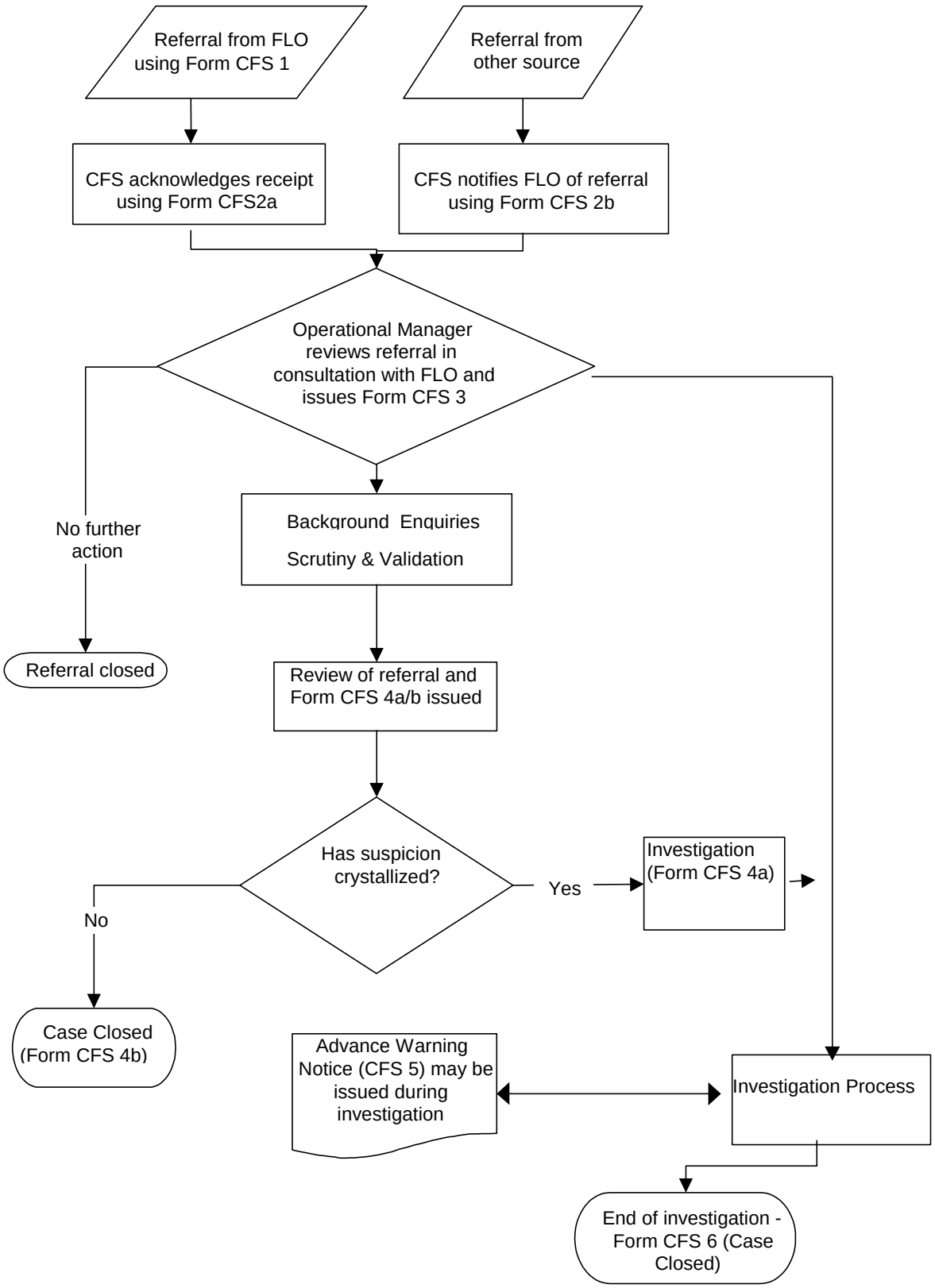
- 100% of all recoveries will go to the relevant NHS Board, less any incurred costs
- any monies received by the CFS for individual claims will be banked and paid out immediately to the relevant NHS Board
- any monies received by the CFS for patient fraud will be banked and paid out in March each year.

Summary of Timescales

RESPONSIBILITY	TIMESCALE
NHS Boards	
Report all instances of fraud, other financial irregularity or financial loss	2 working days
Acknowledge requests for information	2 working days
Provision of information to CFS	10 working days
Counter Fraud Services	
Acknowledge receipt of referral from NHS Board	2 working days
Advise NHS Board of referral from other source	2 working days

Assessment of referral	10 working days
Case updates sent to NHS Boards	Monthly (or by arrangement)
Advance Warning Notice	3 working days before event
Disbursement of recoveries to NHS Boards	Yearly in March immediate for significant sums

CFS Process and Decision Points


Referral from FLO using Form CFS 1
Referral from other source
CFS acknowledges receipt using Form CFS2a
CFS notifies FLO of referral using Form CFS 2b
Operational Manager reviews referral in consultation with FLO and issues Form CFS 3
No further action
Referral closed
Background Enquiries
Scrutiny & Validation
Review of referral and Form CFS 4a/b issued
Has suspicion crystallized?
Yes
Investigation (Form CFS 4a)
No
Case Closed (Form CFS 4b)
Advance Warning Notice (CFS 5) may be issued during investigation
Investigation Process
End of investigation - Form CFS 6 (Case Closed)

Appendix III

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

PATIENT EXEMPTION FRAUD OPERATIONAL PROTOCOL

CONTENTS

1. Introduction
2. Background
3. Expected Outcomes
4. Reporting
5. Risk Assessment
6. Proposed Actions To Reduce Patient Fraud

Annex 1

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1. INTRODUCTION

1.1 The CFS will carry out two distinct exercises, which will each provide estimates of the level of patient exemption fraud/error in NHSScotland.

1.2 The first is an extrapolation of operational results from the proposed 50,000 patient claims checked in 2004/05 and will be carried out at NHS Board and national level. The methodology has been reviewed by National Services Scotland statisticians and Audit Scotland, and accepted as providing a reliable estimate, on an exemption category by category basis.

1.3 For operational reasons this estimate does not cover every exemption category, although those excluded (e.g. patients with relatives with glaucoma) form only a small part of the total exemption cost. This means however that the results of this exercise cannot be extrapolated to give a complete national picture of fraud/error in the patient exemption system.

1.4 The second estimate to be produced by the CFS is based on statistically robust sample sizes, randomly selected from all exemption categories, in each of the three chargeable services, which will give an estimate of fraud/error with 99% confidence +/- 0.03. The statistical theory and the operational checking process have been accepted by Audit Scotland.

1.5 This work is carried out solely for the purpose of providing the CFS Steering Group with an estimated national figure of patient claim fraud/error in NHSScotland. The exercise will be repeated in the future using consistent methodology, to provide evidence to the Steering Group, and the Service, that the counter fraud measures, which have been implemented, are having a beneficial impact. The process will produce an estimate with a range of figures, e.g. a level of fraud/error between 3% and 5%.

1.6 For the reasons noted above, it is expected that the two estimates are unlikely to give exactly the same result.

2. BACKGROUND

Penalty Charge Regulations

2.1 In 1999 the Penalty Charge (Scotland) Regulations came into force meaning that where a patient's entitlement to exemption from NHS charges could not be confirmed and where a patient failed to produce evidence of their entitlement, a penalty charge could be levied against the patient by the authorised body, which in Scotland is the Common Services Agency. These regulations do not cover the Hospital Travel Scheme, but these checks will be undertaken and where entitlement to exemption cannot be confirmed the patients' claims will be followed through.

MEL (2000) 28

2.2 MEL (2000) 28 states that the Fraud Investigation Unit (now the NHSScotland CFS) will "…undertake the work necessary to prevent, detect and pursue patient exemption fraud on behalf of PCTs and IHBs…". In effect this means that the CFS will take the lead on national checking of patient exemption claims on the grounds of age, medical exemption, receipt of benefits, receipt of tax credits and eligibility under the NHS Low Income Scheme.

2.3 For the purpose of this document, the term 'exemption' is being used as a generic reference to claims where patients are exempt on the grounds of age and medical conditions and for claims where patients are on full or partial remission from charges.

2.4 HDL (2004) 23 notes that 100% of all recoveries from patients (net of cost of recovery) will be returned to NHS Bodies.

Point of Dispensing/Treatment/Service Checks

2.5 In 1999 the Point of Dispensing Check was introduced whereby community pharmacists were paid to ask patients to provide proof of their exemption. The Point of Treatment and Service Checks followed this later for dentists and opticians respectively.

2.6 This initial check is the first stage of the exemption checking process and should be undertaken by all those at the point at which the service or treatment is provided and the patient claims entitlement to exemption from charges for the service or treatment provided.

Data Protection Act (1998)

2.7 During 2000/01 the declarations on all claim forms in the Primary Care sector were changed to allow the legal checking of patient data under the Data Protection Act thereby facilitating the exemption checking process and application of Penalty Charges.

2.8 In order that Patient Exemption Checking can be undertaken in the secondary sector it will be necessary to harmonise any claim forms used to ensure that the declaration gives consent to CFS checking the patient information. Only those forms used by the Hospital Eye Service currently list the correct patient declaration.

2.9 This project will be led by the CFS with representation being sought from the service.

Patient Exemption Checking System (PECS)

2.10 The CFS have developed a software package, the Patient Exemption Checking System (PECS) which through an increasingly automated process allows the

extraction of patient claims from the pharmacy, dental and ophthalmic payment systems for checking with the appropriate agency.

2.11 Patient claim information will be obtained from the secondary sector and methods of randomly sampling patients will need to be developed.

2.12 This project will be led by the CFS with representation being sought from the service

Treatment of Recoveries

2.13 Agreement has been reached with SEHD that the CFS will reimburse to NHS Bodies 100% of recoveries made on their behalf as at the end of each financial year. The CFS will also provide a list of suggested debt write-offs with reasons why these debts have not been cleared. This information, with the cheque, will be issued by the CFS by mid April each year.

3. EXPECTED OUTCOMES

3.1 The expected outcomes of patient exemption checking are:

- to allow NHS Bodies (and their auditors) to conclude on the regularity of patient income
- deterrence and recovery of inappropriate claims to increase income for NHS Boards
- risk measurement to determine the level of fraud and to measure the effect of counter fraud initiatives.

Regularity of Patient Income

3.2 The total sample size is determined on a monthly basis by the Patient Claims Manager who establishes the work capacity of the team but will not be less than 4,000 per month across Scotland.

3.3 Sample size within each exemption category is selected on the basis of known risk of fraud/error as determined by past results and on the amount of work involved in checking each type of claim (see 3.2).

3.4 The total sample within each exemption category is then proportionally distributed across all NHS Board areas based on their population size.

3.5 Individual patient claims are then randomly selected from the payment systems by running a query through PECS, which interrogates the three FHS payment systems and produces data files, which are then uploaded into PECS. The Patient Exemption Checking Protocol (Annex 1), details the procedures involved in current checking of FHS claims. This protocol will be amended to incorporate claims from the secondary sector when harmonised claim forms have been agreed and implemented throughout all NHS Boards in Scotland.

3.6 Randomly selected claims for the secondary sector will be manually input into the system until such times as an electronic system can be developed and implemented.

Deterrence And Recovery Of Inappropriate Claims To Increase Income For Divisions

3.7 The CFS Steering Group guidance is that the major focus should be deterrence and therefore a pragmatic approach will be taken to recovery work.

3.8 Under the terms of the MEL (2000) 28, the CFS will take the lead on national publicity campaigns, patient counter fraud initiatives and contractor/staff training to ensure that patients, contractors and NHS staff are fully aware of patient entitlements and to promote a culture change in respect of fraud against the NHS.

Risk Measurement To Determine The Level Of Fraud And To Measure The Effect Of Counter Fraud Initiatives

3.9 To evaluate the effectiveness of the patient checking programme and counter fraud initiatives, the CFS will undertake an annual risk measurement exercise to determine the level of patient fraud in Scotland. The risk measurement procedure has been agreed by Audit Scotland.

3.10 The Patient Claims Team will carry out the risk measurement exercise over a period of two months in each year. This means that the agreed monthly level of checking (see 3.2 Regularity) will apply for only 10 months of each year.

Full details of the Risk Measurement exercise are provided at Annex 2

4. REPORTING

4.1 Quarterly reports will be issued in conjunction with contractor fraud reports, by the middle of the month following each quarter end. These reports will be cumulative and will show the number of cases carried forward, new, closed and proposed write off cases along with the appropriate values. As well as giving individual NHS Board figures, an all-Scotland total will be shown.

4.2 The final report for quarter ending March will have the annual information with analysis to match the cheque being forwarded. Year-end reporting will also include, at Divisional or NHS Board level, a breakdown of the write off reasons and recoveries specific to each exemption category and service. In order to show that cases are not being continued for more than two accounting years, the CFS will show the commencement date of the oldest claim in the carried forward total.

4.3 At the end of January, a report will be provided to each NHS Board extrapolating the results of routine monthly checking to estimate the levels of fraud/error for each category of exemption checked for the period January to December. Where NHS Boards are concerned about the estimated level of

fraud, they may request from the CFS a further extrapolation for the 12 months to March.

4.4 The CFS will hold meetings with each NHS Board annually to review progress and to discuss on-going patient exemption checks and deterrence campaigns as well as other fraud issues.

The data for the reporting periods is as follows:

Period of Reporting	Report Content	Data Used to Produce Report
Quarterly	▪ Cumulative quarterly report commencing with the quarter ending June	▪ A count of all cases processed through PECS in the reporting quarter including all carried forward cases from the previous quarter
January – December Report issued at end of January	▪ Cumulative quarterly report for period January – December ▪ Extrapolation of potential fraud based on claims paid against claims checked	▪ Dental and Ophthalmic claims paid January to December ▪ Pharmacy claims paid November - October ▪ Secondary sector claims paid January - December ▪ PECS cases closed January – December
April – March Report issued mid April	▪ Cumulative quarterly report for period April – March ▪ Write off reasons ▪ Cheque for recoveries	▪ PECS cases processed during April - March

5. RISK ASSESSMENT

5.1 While patient checking will always include a majority of randomly selected claims across all NHS Bodies to ensure audit requirements are met, PECS will hold a significant amount of data which can be analysed to provide a risk assessment of the demographic areas and exemption categories which are most susceptible to mistaken/fraudulent claiming by patients. For example, over 50% of all claims that are checked for Disabled Person's Tax Credit are found to be fraudulent or erroneous. Therefore, proportionately greater numbers of these claims will be checked, as well as a more directed publicity campaign initiated.

5.2 It has been found since checking commenced that exemption claims on the ground of age or medical condition as well as those where a low income certificate has been granted, have provided positive affirmation for around 98% of claims. Using the risk assessment means that relatively few of these claims are checked, allowing resources to be applied to those categories with higher levels of false claims.

5.3 This information will enable the CFS to target these susceptible areas to make best use of the resources available and also to initiate localised publicity campaigns.

6. PROPOSED ACTIONS TO REDUCE PATIENT FRAUD

6.1 The main remit of the CFS is to deter fraud and, having identified the problems surrounding patient error/fraud, it must put forward a range of solutions to be agreed by NHS Bodies.

Operational Proposals

6.2 Further development of PECS – will automate the links to dental, ophthalmic and pharmacy systems resulting in an 8,000 patient checks per month capacity (randomly selected within exemption category and proportionate to Board/Division population size).

6.3 Through the use of a statistically robust risk measurement exercise, determine the level of patient exemption claim fraud/error in Scotland – repeating the exercise each year to determine the effectiveness of counter fraud activities.

6.4 Ensure that all patient payment data is easily accessible at NHS Board level.

6.5 Produce quarterly and annual reports to Directors of Finance detailing all counter fraud activity for patients and contractors during the period.

Annex 1

NHSScotland
Counter Fraud Services

PATIENT EXEMPTION CHECKING

PROTOCOL

1. PATIENT EXEMPTION CHECKING – REGULARITY & DETERRENCE

1.1 The patient data extracted from the different payment systems for Dental, Ophthalmic and Pharmacy will be split into four categories:

- Age, Medical and Pre-payment Certificate Exemptions
- Department for Work and Pensions exemptions
- Inland Revenue exemptions
- NHS Low Income Scheme exemptions.

1.2 Claims are loaded into the Patient Exemption Checking System (PECS) where the progress of each claim is tracked. In all cases where the checking agency either confirms that the patient is exempt or is deceased, the case is closed.

1.3 The full functional specification for PECS is available to service auditors from the Patient Claims Manager.

Age, Medical Exemption and Pre-payment Certificates

1.4 The patient data extracted from the payment information will be sorted into three files relating to Practitioner Services Medical Payment Verification (PV) Teams in the offices in Aberdeen, Edinburgh and Glasgow.

1.5 The PV teams within each of the regional offices will verify patients' age, medical exemption and pre-payment certificate status via the Community Health Index (CHI) database.

1.6 The details of any patients who appear to have provided false information will be referred to the CFS who will follow up the check with a letter to the patient. These checks will include confirmation from schools, colleges and universities that patients within the appropriate age range were in fact in full time education on the date of the treatment/service.

1.7 In response to the letter, any amended information provided by the patient will be re-checked and if validated, there will be no further action.

1.8 Should the patient fail to respond to this or the amended information continues to be invalid, a Penalty Charge notice will be issued for recovery of the appropriate statutory charge plus the penalty charge which is 5 times the charge evaded up to a maximum of £100.

1.9 If the patient fails to respond to the penalty charge notice within 28 days, a further letter will be issued with a surcharge of 50% of the penalty charge applied.

1.10 Should the patient fail to respond to any of the above, following individual case review, the details will be sent to a debt management agency acting on behalf of the CFS, and the debt will be pursued.

Department for Work and Pensions (DWP) Exemptions

1.11 The patient data is extracted from the payments systems for the three contractor groups. Claim information extracted from the three contractor group payment systems is uploaded into the PECS within the CFS. Additional patient data will be added manually.

1.12 A data file of claims will be sent to the DWP where the data file will be matched against the DWP information and all claims will be assigned an outcome of confirmed, not confirmed or deceased.

1.13 Patients who are not confirmed will be reported back to the CFS who will issue a letter to all those who appear to have claimed exemption either mistakenly or fraudulently.

1.14 In response to the letter, any amended information provided by the patient will be re-checked and if validated, there will be no further action.

1.15 Should the patient fail to respond to this or should the amended information continue to be invalid, a Penalty Charge notice will be issued for recovery of the appropriate statutory charge plus the penalty charge, which is 5 times the charge up to a maximum of £100 (See Paragraph 2.2)

1.16 If the patient fails to respond to the penalty charge notice within 28 days, a further letter will be issued with a surcharge of 50% of the penalty charge applied.

1.17 Should the patient fail to respond to any of the above, following individual case review by the CFS, the details will be sent to a debt management agency acting on behalf of the CFS, and the debt will be pursued.

Inland Revenue Exemptions

1.18 The patient data is extracted from the payment systems for the three contractor groups. Claim information extracted from the three contractor group payment systems is uploaded into the PECS within the CFS. Additional patient data will be added manually.

1.19 As the Inland Revenue has no facility to check patient data, all claims in the Tax Credit exemption category will be written to by the Patient Claims Team requesting evidence of their entitlement to exemption from NHS Charges.

1.20 In response to the letter, any amended information provided by the patient will be re-checked and if validated, there will be no further action.

1.21 Should the patient fail to respond to this or should the amended information continue to be invalid, a Penalty Charge notice will be issued for recovery of the appropriate statutory charge plus the penalty charge, which is 5 times the charge up to a maximum of £100.

1.22 If the patient fails to respond to the penalty charge notice within 28 days, a further letter will be issued with a surcharge of 50% of the penalty charge applied.

1.23 Should the patient fail to respond to any of the above, following individual case review, the details will be sent to a debt management agency acting on behalf of the CFS, and the debt will be pursued

NHS Low Income Scheme Exemptions

1.24 The patient data is extracted from the payments systems for the three contractor groups.

1.25 Claim information extracted from the three contractor group payment systems is uploaded into the Patient Exemption Checking System (PECS) within the CFS. Additional patient data will be added manually.

1.26 A data file of claims will be sent to the Prescription Pricing Authority in Newcastle, who administers the NHS Low Income Scheme for the whole of the UK, where the data file will be matched against the NHS Low Income Scheme information and all claims will be assigned an outcome of confirmed, not confirmed or deceased.

1.27 Patients who are not confirmed will be reported back to the CFS who will issue a letter to all those who appear to have claimed exemption either mistakenly or fraudulently.

1.28 In response to the letter, any amended information provided by the patient will be re-checked and if validated, there will be no further action.

1.29 Should the patient fail to respond to this or should the amended information continue to be invalid, a Penalty Charge notice will be issued for recovery of the appropriate statutory charge plus the penalty charge, which is 5 times the charge up to a maximum of £100.

1.30 If the patient fails to respond to the penalty charge notice within 28 days, a further letter will be issued with a surcharge of 50% of the penalty charge applied.

1.31 Should the patient fail to respond to any of the above, following individual case review, the details will be sent to a debt management agency acting on behalf of the CFS, and the debt will be pursued.

2. COMMUNICATION WITH PATIENTS

2.1 It is our intention to give patients the appropriate information to allow them to respond and to ensure that we do not appear to pursue people who are genuinely exempt or who cannot afford to pay.

2.2 It is imperative that we avoid any adverse publicity when pursuing patients, while still ensuring that we get across the deterrence message. To this end, we will not proceed with any penalty charge notices until we have given the patient an opportunity to provide the correct information or to pay the actual statutory charge, which they have not yet paid.

2.3 Each stage in the process will comply with all relevant legislation including the Human Rights Act and the Data Protection Act.

2.4 Copies of all standard patient correspondence are available from the Patient Claims Manager.

Initial Patient Letter

2.5 The letter will be the first point of contact with the patient when the exemption information on the claim cannot be confirmed and it will be explained that a response must be made within 28 days to ensure the case is not escalated to the next stage.

2.6 The letter will provide an explanation of the reason for the enquiry, information about the service provided, the exemption category and the charge which may have been evaded and will inform the patient where and how to pay the charge if the claim was made mistakenly. The letter will be sent from the Patient Claims Team with no reference to "CFS" to encourage patients to provide correct information. A helpdesk number will be provided should patients require additional information or advice. A pre-paid addressed envelope will be provided.

2.7 Should the patient fail to respond to the questionnaire within 28 days the claim will be escalated to the next stage.

Penalty Charge Notices

2.8 The patient will be given every opportunity to provide relevant information as to their exemption status or to pay the statutory charge which was originally applicable. Should the patient fail to respond, provide additional information or pay the charge; the National Health Service (Penalty Charge) (Scotland) Regulations 1999 will be applied.

2.9 The penalty charge notice will be issued in the form of a letter, which will have the statutory equivalence of an initial writ and, as such, will be worded more formally than the previous correspondence. This letter will be sent with the heading "Counter Fraud Services".

2.10 This letter will be issued by the Patient Claims Manager to identify to the patient an escalation in the procedures relating to their failure to pay the statutory charge for the service received. An addressed envelope will be provided.

Surcharge Letter

2.11 The patient will have a statutory 28 days to respond to the Penalty Charge notice and, if no response or payment is received, a letter informing the patient of an additional surcharge will be issued. Once again, the letter will be sent with the heading "Counter Fraud Services".

2.12 The surcharge will be 50% of the penalty charge and will be added to the previous total to be paid by the patient.

2.13 This letter will be issued by the Patient Fraud & Communications Manager to identify to the patient an escalation in the procedures relating to their failure to pay the statutory charge for the service received. An addressed envelope will be provided.

Referral to the Debt Management Agency

2.14 Prior to referral to Debt Management, all cases are reviewed individually to ensure we are not pursuing someone who may be particularly vulnerable.

2.15 Review procedures cannot be completely prescriptive because of the different circumstances surrounding each case but the most frequently used criteria are:

- confirm on the Community Health Index (CHI) that the patient has not died between the commencement of initial checks and referral to Debt Management
- initiate further checks on address information
- determine the age and residential status of the patient
- check PECS notes page and correspondence files to identify any extenuating circumstances for the patient's failure to provide evidence of entitlement or payment of the charge.

Annex 2

NHSSCOTLAND

COUNTER FRAUD SERVICES

MEASUREMENT OF THE LEVEL OF

PATIENT FRAUD IN SCOTLAND

PROTOCOL

1. BACKGROUND

1.1 The CFS Steering Group, chaired by the Director of Performance Management & Finance, Scottish Executive Health Department, concluded that a risk measurement exercise should be undertaken to estimate the level of patient fraud in Scotland.

1.2 The Counter Fraud and Security Management Service for England and Wales and the Northern Ireland Counter Fraud Unit both undertake risk measurement exercises within their own countries, albeit with very different methodologies, to identify the potential level of patient fraud within the NHS.

1.3 The methods used have been considered by the CFS and whilst they are statistically robust and meet audit requirements, the CFS has investigated other methods of undertaking this exercise and will implement a process, which will deliver a risk measurement exercise for Scotland.

1.4 The process has been reviewed and agreed by Audit Scotland.

2. PROCESS

2.1 NHSScotland CFS will undertake an annual risk measurement to determine the level of claims where exemption from charges is made fraudulently or mistakenly.

Patient Sample

2.2 Statisticians in the Primary Care Information Group, of the NSS' Information & Statistics Division advised that a sample of 1,842 patients for each of the three contractor groups (Dentists, Opticians and Pharmacists) would allow a statistically robust measure of the level of fraud by patients in the Family Health Services.

2.3 The sample claims will be extracted from the payment systems using the Oracle random number generator programme to ensure that there is no pre-determined pattern of selection.

Operational Process

2.4 The sample claims will be uploaded into a Risk Measurement version of the Patient Exemption Checking System (PECSRM), which has been modified to reflect the time scales permitted for responding to letters.

2.5 The system will automatically generate data extract files for the appropriate checking agency and where claims have been extracted which do not fall into our normal monthly checking processes, e.g. Diabetes, Glaucoma, War Pensioners, these patients will be checked, where possible, in the CHI database and subsequently contacted for evidence.

2.6 The processing cycle for claims is summarised below:

- patients whose entitlement to exemption from charges cannot be confirmed, will be contacted by letter

- if the patient responds with evidence, the claim will be closed as exempt

- if the patient confirms they were not exempt, the claim will be closed as fraudulent

- if the patient fails to respond, the address and other information will be checked on the CHI and on the Quick Address System (QAS). If the details we hold are correct, the patient will be sent a reminder letter

- if an alternative address is found, the initial letter will be re-issued and then follow the same process for response

- the responses to the reminder letter will be handled in the same manner as the responses to the initial letter

- if the patient fails to respond to the reminder letter, we will seek to identify their telephone number and initiate contact by telephone.

▪ if after two attempts at contacting the patient by telephone, we are unable to obtain a response or evidence of entitlement to exemption from charges, the case will be closed as potentially fraudulent. A call log will be maintained for record purposes.

2.7 The data obtained from this measurement exercise will enable us to identify claims which are considered to be fraudulent and potentially fraudulent thereby determining a base level for the range of potentially fraudulent claims by patients within the FHS.

2.8 This data will be reviewed by statisticians from ISD's Primary Care Information Group to calculate rates and confidence intervals in order to estimate levels of fraud in Scotland.

2.9 The results will be presented to the Steering Group, Audit Scotland and will be published in the CFS' Annual Review.

Appendix IV

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 OPERATIONAL PROTOCOL

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1. Introduction
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3. Role Of Counter Fraud Services
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    4.2 Intrusive Surveillance
    4.3 Directed Surveillance
    4.4 Covert Human Intelligence Sources (CHIS)
5. Process Maps

Annex 1

Annex 2

1. INTRODUCTION

1.1 This protocol explains what action may be considered to be covert surveillance and when the supplier of information may be deemed a covert human intelligence source. It also examines whether such actions require authorisation under RIP(S)A and what should be done when such actions are considered necessary by NHS Boards.

2. BACKGROUND

2.1 As a result of Article 8 of the European Convention on Human Rights, the Regulation of Investigatory Powers (Scotland) Act 2000, known as RIP(S)A, was introduced in October 2000. RIP(S)A applies only to pubic authorities and governs the manner in which covert investigations are carried out.

2.2 Under RIP(S)A, three types of covert investigations are regulated, these are:

- Directed surveillance
- Intrusive surveillance
- Covert Human Intelligence Sources (CHIS).

2.3 The National Services Scotland is a named authority, listed under RIP(S)A and entitled to carry our directed surveillance and to use covert human intelligence sources.

2.4 There are three purposes for which RIP(S)A functions may be authorised:

- preventing or detecting crime or preventing disorder;
- protecting public health; and
- in the interests of public safety.

2.5 However, it should be noted that the CFS would only seek to use RIP(S)A functions for the first purpose i.e. preventing or detecting crime or preventing disorder.

2.6 Initially NHSS bodies were listed under RIP(S)A. However, in his annual report for 2001 – 2002, the Chief Surveillance Commissioner expressed concern that NHSS bodies needed to be fully trained in the use and conduct of RIP(S)A functions while they remained listed, although they were unlikely ever to be required to authorise or carry out these functions. As a consequence, the Scottish Executive intend to amend the Regulation of Investigatory Powers (Scotland) Act 2000 to remove the powers of NHSS Divisions, Boards and Special Health Boards to grant authorisation under RIP(S)A. The Scottish Executive directed (HDL 2003 (30)) that cases of NHS fraud or other irregularity be passed to the CFS who, where appropriate, would authorise and conduct directed surveillance and the use of covert human intelligence sources on behalf of NHSS bodies.

3. ROLE OF COUNTER FRAUD SERVICES

3.1 Cases of potential criminal activity involving NHS fraud or other irregularities should be passed to the CFS, whose functions were extended to cover these activities from 6 June 2003 by virtue of the NHS (Functions of the Common Services Agency) (Scotland) Amendment (No. 2) Order 2003 S.S.I. 2003/306. The CFS will then consider whether the use of directed surveillance or a covert human intelligence source:

- would be necessary and proportionate
- would constitute a RIP(S)A function
- would be undertaken by CFS.

3.2 Where other cases arise which do not involve NHS fraud or other irregularities, or which may involve the prevention of disorder, the protection of public health or public safety, NHS Boards should contact a public body with complementary powers in the relevant area. The relevant Police Force will be the appropriate body in many cases but, where there is any doubt or where the NHS Board wishes to discuss the matter informally in the first instance, it is open to the NHS Board to contact the CFS, who will be happy to offer advice.

4. DESCRIPTION OF TERMS

4.1 Covert Surveillance

4.1.1 Surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place. It therefore, does not include the use of Closed Circuit Television in public places where the use of such CCTV cameras is notified by the placement of signs.

4.2 Intrusive Surveillance

4.2.1 Surveillance is intrusive if it is covert surveillance that:

(a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
(b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

4.2.2 As stated before, CFS is not entitled to grant authorisations for intrusive surveillance and will not become involved in this type of surveillance.

4.3 Directed Surveillance

4.3.1 Surveillance is directed if it is covert but not intrusive and is undertaken:

(a) for the purposes of a specific investigation or a specific operation;

(b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
(c) otherwise than by way or an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIP(S)A to be sought for the carrying out of the surveillance.

4.3.2 There are a number of misconceptions about what is meant by 'surveillance' in the world of investigation and it may be thought that surveillance has nothing to with NHSScotland. However, Health Bodies may have used covert video cameras, or discreetly observed staff practices to identify culprits - this is surveillance and is covered by RIP(S)A. Internal Audit Departments may have watched deliveries, followed health personnel in their cars - all types of fairly low-level activity, but never-the-less surveillance.

4.4 Covert Human Intelligence Sources (CHIS)

4.4.1 A person is a covert human intelligence source if the person:

(a) establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c) below;
(b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or
(c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

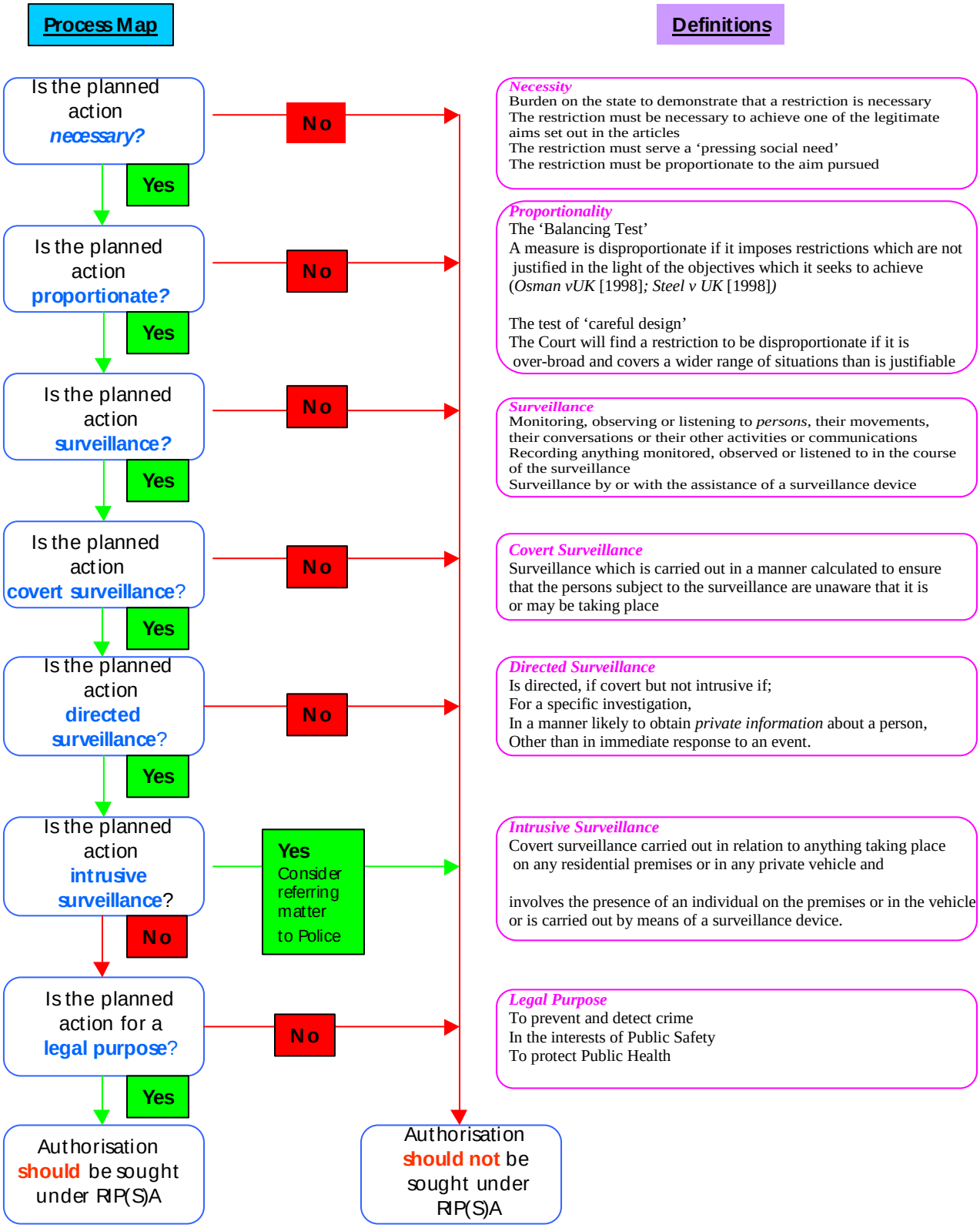
4.4.2 The provisions of RIP(S)A are not intended for circumstances where members of the public volunteer information to the Police or other public authorities, as part of their normal civic duties, or contact numbers specifically set up to receive anonymous information (such as the CFS Hotline). Members of the public acting in this way would not generally come within the definition of a covert human intelligence source. However, someone may become a source as a result of a relationship with a public authority that began in this way.

5. PROCESS MAPS

5.1 The attached Covert Surveillance Process Map (Annex 1) and Covert Human Intelligence Source Process Map (Annex 2) show what **must** be considered before any action is taken. This ensures that any such action is necessary, proportionate and for a legal purpose, such as the prevention and detection of crime.

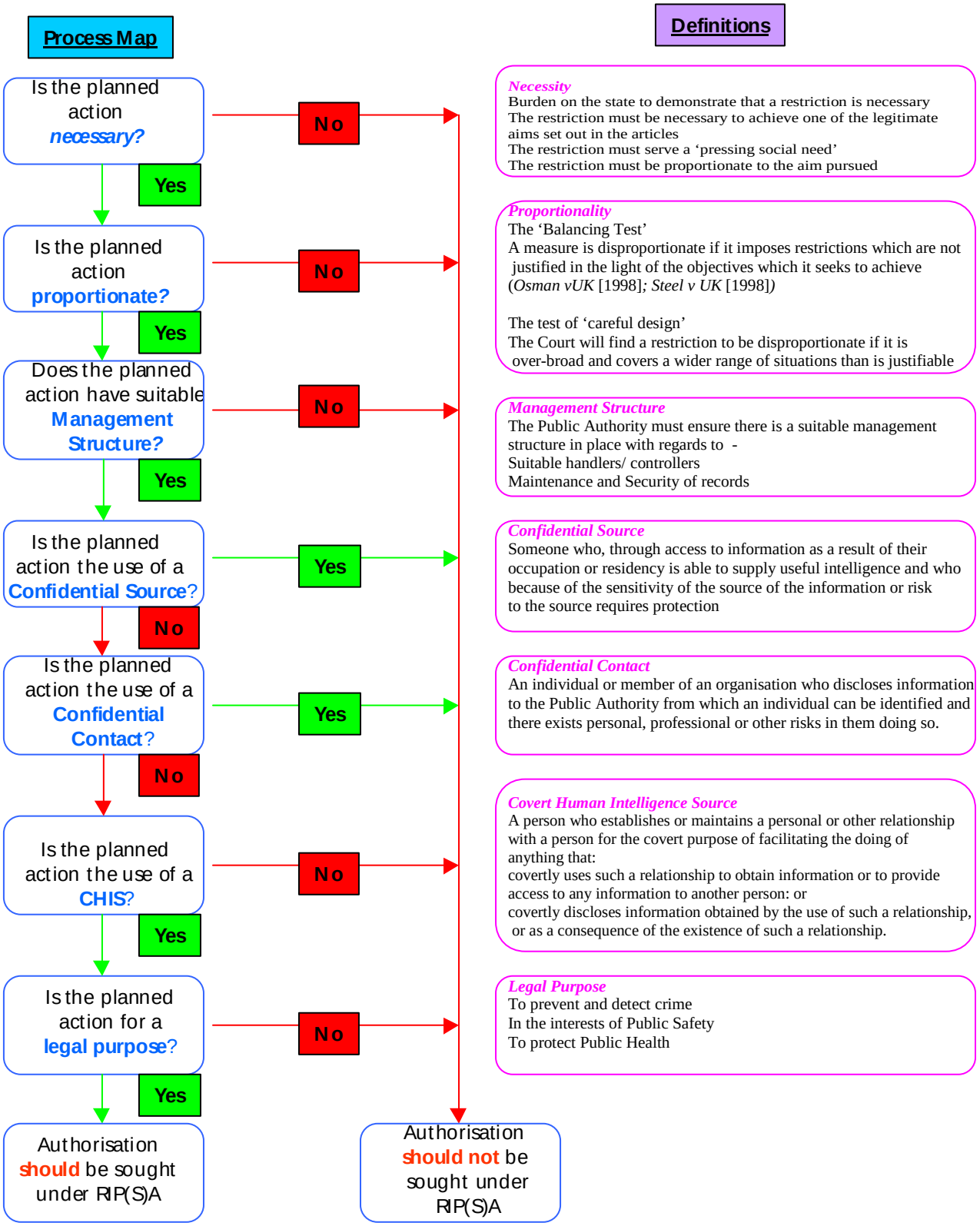
5.2 If there is any doubt about whether any action being considered falls within the scope of the Act, the CFS must be contacted for advice.

Regulation of Investigatory Powers (Scotland) Act 2000
Covert Surveillance Process Map


Process Map
Definitions
Is the planned action necessary?
No
Yes
Is the planned action proportionate?
No
Yes
Is the planned action surveillance?
No
Yes
Is the planned action covert surveillance?
No
Yes
Is the planned action directed surveillance?
No
Yes
Is the planned action intrusive surveillance?
Yes
Consider referring matter to Police
No
Is the planned action for a legal purpose?
No
Yes
Authorisation should be sought under RIP(S)A
Authorisation should not be sought under RIP(S)A
Necessity
Burden on the state to demonstrate that a restriction is necessary
The restriction must be necessary to achieve one of the legitimate aims set out in the articles
The restriction must serve a 'pressing social need'
The restriction must be proportionate to the aim pursued
Proportionality
The 'Balancing Test'
A measure is disproportionate if it imposes restrictions which are not justified in the light of the objectives which it seeks to achieve (Osman vUK [1998]; Steel v UK [1998])
The test of 'careful design'
The Court will find a restriction to be disproportionate if it is over-broad and covers a wider range of situations than is justifiable
Surveillance
Monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications
Recording anything monitored, observed or listened to in the course of the surveillance
Surveillance by or with the assistance of a surveillance device
Covert Surveillance
Surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place
Directed Surveillance
Is directed, if covert but not intrusive if;
For a specific investigation,
In a manner likely to obtain private information about a person,
Other than in immediate response to an event.
Intrusive Surveillance
Covert surveillance carried out in relation to anything taking place on any residential premises or in any private vehicle and
involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.
Legal Purpose
To prevent and detect crime
In the interests of Public Safety
To protect Public Health

This process map and definitions should be read in conjunction with:-
1 European Convention on Human Rights (ECHR)
2 Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)
3 Covert Surveillance Code of Practice
4 CFS Manual

Regulation of Investigatory Powers (Scotland) Act 2000
Covert Human Intelligence Source Process Map



Definitions

Necessity
Burden on the state to demonstrate that a restriction is necessary
The restriction must be necessary to achieve one of the legitimate aims set out in the articles
The restriction must serve a 'pressing social need'
The restriction must be proportionate to the aim pursued

Proportionality
The 'Balancing Test'
A measure is disproportionate if it imposes restrictions which are not justified in the light of the objectives which it seeks to achieve (*Osman vUK* [1998]*; Steel v UK* [1998])

The test of 'careful design'
The Court will find a restriction to be disproportionate if it is over-broad and covers a wider range of situations than is justifiable

Management Structure
The Public Authority must ensure there is a suitable management structure in place with regards to -
Suitable handlers/ controllers
Maintenance and Security of records

Confidential Source
Someone who, through access to information as a result of their occupation or residency is able to supply useful intelligence and who because of the sensitivity of the source of the information or risk to the source requires protection

Confidential Contact
An individual or member of an organisation who discloses information to the Public Authority from which an individual can be identified and there exists personal, professional or other risks in them doing so.

Covert Human Intelligence Source
A person who establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything that:
covertly uses such a relationship to obtain information or to provide access to any information to another person: or
covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

Legal Purpose
To prevent and detect crime
In the interests of Public Safety
To protect Public Health

This process map and definitions should be read in conjunction with:-
1 European Convention on Human Rights (ECHR)
2 Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA)
3 Covert Human Intelligence Source Code of Practice
4 CFS Manual

Appendix V

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

Human Resources Protocol

CONTENTS

1. Application Of Sanctions – HR/CFS Complementary Policies
2. Disciplinary Hearings
3. Suspension

1. APPLICATION OF SANCTIONS – HR/CFS COMPLEMENTARY POLICIES

1.1 Discipline policies and procedures for NHSScotland employees (members of the medical and dental professions excepted) follow a common structure. In accordance with the PIN Guideline Management of Employee Conduct, where the actions of an employee are such that it is considered to be appropriate to invoke the disciplinary procedure, no disciplinary action will be considered until a thorough investigation has been carried out, and a manager will be identified to undertake the investigation.

1.2 Following consultation with the HR and Partnership Forums, it has been agreed that:

- where the actions of the employee are such that the employing NHS Board considers that the disciplinary procedure should be invoked;

  and

- there is a suspicion that the action of the employee may amount to the commission of a specified offence (see Appendix VI) and criminal sanctions are to be sought

the CFS will conduct the investigation in line with the local NHS Board disciplinary procedures.

1.3 The responsibility of the CFS in discipline terms would be limited to the scope of the actions currently undertaken by the appointed "investigating manager" in interviewing witnesses and recording witness statements. However the CFS will not interview the employee under investigation as part of that discipline procedure. This disciplinary interview would remain the responsibility of Management and Human Resources Department of the employing NHS Board. None of the foregoing would affect the rights of CFS to conduct a criminal suspect interview at the conclusion of the criminal investigation.

1.4 The rationale behind this agreement is that where such allegations would in any event be referred to the CFS for criminal investigation, there seems to be no reason for witnesses to be interviewed twice, i.e. by CFS and by the appointed manager conducting the discipline procedure. All statements recorded by CFS can be used in disciplinary, civil and criminal proceedings; and subject to agreement from the Crown Office and Procurator Fiscal Service will be released to the investigating manager for presentation to the disciplining manager at the appropriate hearing.

1.5 It is therefore agreed that where the PIN Guideline states that, "A manager will be identified to undertake the investigation…" NHS Boards should consider including within their local disciplinary procedures the following provision: "where a specified offence is suspected and criminal sanction is to be sought, the CFS will undertake the investigation…"

1.6 The CFS investigators will remain bound by the principles of the PIN Guidelines detailing the investigation of disciplinary allegations, including reference in particular to the prompt gathering of all relevant facts; witnesses being accompanied at interview by union/professional organisation representative, or a colleague not involved in the investigation; notification to witnesses that statements may be used as evidence in disciplinary hearings.

1.7 In addition it was agreed that NHS Boards should consider including provisions to the following effect in their local disciplinary procedures:

- Reporting of the result of any disciplinary cases to the press should be limited to the result of the case without reference to the specific allegation, as this may affect the right of the individual to a fair (criminal) trial.

- All statements to include the written declaration from the witness that they have made the statement in the knowledge that it could be used in disciplinary, civil or criminal cases.

- The information exchange would be a one-way process. CFS would interview witnesses and would disclose statements to HR leads but would not be involved in the (discipline) interview of the individual nor would CFS have access to the transcript of that interview.

2. DISCIPLINARY HEARINGS

2.1 In every case where it is proposed to proceed to a disciplinary hearing whilst there is a criminal case pending based on the same or related allegations, the advice of Central Legal Office/external equivalent is to be sought before proceeding. There is no requirement under the criminal law for staff to be retained on full pay pending the criminal case. However, it may be considered inappropriate to proceed with a disciplinary hearing if the individual concerned declines to attend. In every such case, CLO/external equivalent will advise on whether the evidence is in itself sufficiently strong and compelling to justify dismissal in absentia, if necessary. In practice, such action will be the exception rather than the rule.

3. SUSPENSION

3.1 This is not a disciplinary sanction and is a neutral act and would normally only be considered where the behaviour alleged would if proved, constitute an offence of a serious nature and time is needed to investigate the circumstances further. The employee must be informed of the reason for the suspension against which there is no appeal.

3.2 It is proposed that where there is to be an investigation by CFS, the health board should where practicable, consult the CFS prior to suspending any member of staff. It must be stressed that CFS are not proposing that they take any part in the decision as to whether or not suspension is appropriate. Rather CFS would seek to be in a position to make recommendations about the timing of the

suspension in the interest of securing the integrity of any potential evidence. Where the suspension takes place outside of standard office hours, CFS should be notified as soon as possible thereafter.

3.3 For example, if the alleged offence concerned conduct within NHS premises, such as payroll fraud or improper application of tendering regulations, and the decision to suspend had been taken, CFS may recommend that the individual be escorted from the premises in order that evidence could not be tampered with. If however the allegation concerned the theft of property, CFS may recommend that it was more appropriate to reasonably delay the suspension in order to enable the searching (under warrant) of the garage (for example) at the home of the individual concerned.

3.4 It is recognised that this document may require review in light of experience and HR leads are encouraged to engage with CFS in identifying proposals for future amendments to this protocol.

Appendix VI

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

SPECIFIED OFFENCES

1. LIST OF SPECIFIED OFFENCES

1.1 The remit of the CFS is limited to matters of loss by theft, dishonesty, deception and/or manipulation of documents/records where there is a loss to the NHSScotland. The following is a list of offences which, following the consultation process, the CFS may investigate:

- Falsehood, Fraud and Wilful imposition
- Embezzlement
- Corruption
- Theft by fraud
- Theft by omission
- Other financial irregularities involving dishonesty or deception such as timesheet irregularities, sick leave irregularities, failure to declare gifts, breaches of NHS Circulars or Standing Financial Instructions or other accounting irregularities. This list is not exclusive, but contains only examples of the type of offence that may attract a CFS investigation.

1.2 In exceptional circumstances, or in the interest of the Service, but always as directed by the Accountable Officer, CFS will investigate the alleged commission of any of the specified offences where there is no direct loss to NHS funds e.g. patient or endowment funds. However, the employing NHS Board must intend to report the matter to the Police or the Procurator Fiscal in order to seek criminal proceedings.

1.3 Where an employee has been accused of theft, which does not involve the type of offences listed above, the matter will be reported to the Police or Procurator Fiscal, and any investigation is to be left up to the Police, in accordance with current practice.

Appendix VII

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

FRAUD ACTION PLAN

CONTENTS

1. INTRODUCTION

2. PUBLIC SERVICE VALUES

3. THE BOARD'S POLICY

4. ROLES AND RESPONSIBILITIES

5. THE ACTION PLAN

6. THE LAW AND ITS REMEDIES

7. GUIDANCE TO STAFF ON FRAUD

APPENDIX A - (SUGGESTED) STANDING FINANCIAL INSTRUCTIONS

1. INTRODUCTION

This Appendix to the Board/Counter Fraud Services Partnership Agreement is intended to provide the practical information required by the Board and its staff to counter fraud and other irregularities. It includes a section of guidance to staff that will form part of the induction training for all new staff and the fraud awareness presentations/information to current Board staff.

One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk of and means of enforcing the rules against theft, dishonesty, fraud and similar illegal acts, e.g. damage to Board property.

NHS Scotland's policy on countering fraud and other irregularities has been laid out in the Health Board Partnership Agreement. The NHSScotland Counter Fraud Services (CFS) has been created specifically to assist all Boards in their efforts to reduce losses through fraud and corruption and this document sets out the Board's policy and action plan to achieve such a reduction. The Board recognises that every £ of fraud prevented or recovered means increased funding for patient care.

The Board has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders, Standing Financial Instructions (SFI), operational procedures and a system of internal control and risk assessment. In addition, the Board will work with CFS to promote a fraud awareness culture.

The Board has signed a Partnership Agreement with CFS, which outlines what must happen in the event of a fraud or other irregularity being discovered, and what the Board and CFS will do to actively counter the threat of fraud and corruption.

This document is intended to provide detailed direction and help to those officers and directors who find themselves dealing with cases of suspected theft, fraud and corruption. It sets out a response framework, which centres on immediate discussions and agreement with CFS in respect of how each case will be taken forward. On behalf of the Board, CFS will take forward any relevant case (see Appendix VI - List of Specified Offences) which has the potential for criminal prosecution and Board staff need to be aware of this, and of their responsibilities in the event that a criminal prosecution is not the chosen route.

This action plan is intended to be an integral part of the Board's overall counter fraud and corruption strategy.

2. PUBLIC SERVICE VALUES

High standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. The Code of Conduct published by the Scottish Executive Health Department (SEHD) in April 1994 set out the following public service values:

Accountability: Everything done by those who work in the organisation must be able to stand the tests of parliamentary scrutiny,

public judgments on propriety, and professional codes of conduct.

Probity: Absolute honesty and integrity should be exercised in dealing with NHS patients, staff, assets, suppliers and customers.

Openness: The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

All those who work in the organisation should be aware of, and act in accordance with, these values.

3. THE BOARD'S POLICY

The Board is committed to the NHSScotland policy on countering fraud and corruption and to the public service values outlined above.

The Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of theft, dishonesty, corruption or fraud to report them without delay. It is also the Board's policy, which will be rigorously enforced, that all members of staff can be confident that they will not suffer in any way as a result of reporting suspicions held in good faith i.e., suspicions other than those that are raised maliciously.

4. ROLES AND RESPONSIBILITIES

As Accountable Officer, the Chief Executive has the responsibility for countering fraud in its broadest terms. To fulfil this responsibility, as well as the Board's own staff and directors, they have the resources of the CFS to call upon. The Chief Executive may delegate the day-to-day responsibility for the management of individual cases to the Board's Director of Finance and Chief Internal Auditor

The Partnership Agreement places a duty on the Fraud Liaison Officer to notify the CFS of all relevant cases. The Board's external auditor, the Chair of the Audit Committee and the Chairman of the Board will be informed in all cases.

The Fraud Liaison Officer will discuss each relevant case (see list of specified offences) with CFS and decide if there is a potential for criminal prosecution, or disciplinary and/or civil action. If the former, then CFS will undertake the investigation, on behalf of, and in co-operation with, the Board. This will not preclude the Board taking disciplinary and/or civil action, however that could only occur with agreement from CFS and the relevant procurator fiscal.

In cases where the Fraud Liaison Officer and CFS cannot agree on a course of action, the Accountable Officer shall make a decision based on the facts presented.

Where CFS is undertaking a case on behalf of the Board no further action shall be taken by the Director of Finance, the Fraud Liaison Officer, the Human Resources

Director, or any other Board officer without consultation with CFS. This is necessary to maintain the integrity of the investigation.

Where it is agreed that the Board shall commence an internal enquiry with a view to disciplinary proceedings and/or civil recovery, if at any stage it becomes apparent that an actionable criminal act may have taken place, the investigation must be halted and CFS consulted.

Regardless of whether the investigation is carried out with a view to criminal prosecution, or disciplinary/civil recovery, all staff are under a duty to refrain from taking any direct action with regard to the enquiry without first consulting the Director of Finance, Chief Internal Auditor or the CFS Officer in Charge.

The Director of Human Resources shall ensure that those involved in the investigation are advised in matters of employment law and in other procedural matters, such as disciplinary and complaints procedures, as required.

The Chief Executive has a duty to ensure that all Board staff and primary care contractors are aware of the implications of fraud for the NHS and of how they can work with the Board and the CFS to deter, detect and prevent it.

The CFS, in conjunction with Boards, must deliver such publicity campaigns, staff induction information and fraud awareness presentations, as to allow Boards to fulfil their obligations in countering fraud.

Finally, all staff have a duty to protect the assets of the Board. Assets include information, intellectual property and goodwill as well as cash and physical property.

PUBLIC INTEREST DISCLOSURE ACT 1998

As noted in the policy statement, the Board will maintain an honest and open culture and wishes to encourage anyone having suspicions of theft, dishonesty, corruption or fraud to report them without delay. All NHSS Boards are required to have a policy in place which provides for a secure environment for staff, practitioners and patients to report suspected frauds.

Guidance has been issued by Audit Scotland to organisations recommending what actions to take when staff suspect that fraudulent activity is being perpetrated. This guidance takes the form of booklets for managers and staff entitled 'Don't turn a blind eye'. Further information is also available on the Public Concern at Work website – www.whistleblowing.org.uk

The Fraud Liaison Officer is authorised to receive enquiries from staff confidentially and anonymously. They are also authorised to decide whether the matter raised should be reported to the Director of Finance and/or the Chair of the Audit Committee.

The Board's (external) Appointed Auditor is also so authorised.

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

The use of covert surveillance or covert human intelligence sources by public authorities is strictly limited by the provisions of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The Common Services Agency is a named authority under RIP(S)A and, as such, only the Head of CFS, the Operational Managers and a nominated senior investigator may authorise directed surveillance and the use of covert human intelligence sources (CHIS) in NHSScotland.

As a result of the Scottish Executive decision to amend RIP(S)A to remove the powers of NHSS Trusts, Boards and Special Health Boards to grant authorisation under RIP(S)A, all cases of potential criminal NHS fraud or other irregularity (as listed in Appendix VI – Specified Offences) must be referred to the CFS. Where appropriate the CFS will authorise and conduct directed surveillance and the use of CHIS on behalf of NHSS bodies. Where NHSS bodies are considering surveillance or the use of a CHIS in cases which do not involve fraud or other financial irregularities, such as public or staff safety or the prevention of disorder, they should contact the appropriate public body as outlined in HDL (2003) 30. This will normally be the relevant police force.

SEHD GUIDANCE

The SEHD guidance on financial control procedures when criminal offences are suspected is provided within the Partnership Agreement, specifically: -

- in cases of theft, where there are reasonable grounds for thinking that an item of property, including cash, has been stolen, the Director of Finance should report the details to the police

- in cases of suspected fraud, embezzlement, corruption and other financial irregularities, preliminary enquiries should be carried out with as much speed as possible. Restitution of funds or property is not a reason for withholding information or failing to report the facts. At the very early stages of a case of suspected fraud, including fraud involving endowment or patient funds, the CFS must be contacted to discuss whether the case will be taken forward criminally and/or through discipline and/or civil recovery,

- where preliminary investigations suggest that prima facie grounds exist for believing that a criminal offence has been committed, the Board and the CFS must decide if criminal prosecution would be an appropriate route. The norm is that all such cases should be considered for reporting to the procurator fiscal, however where both the Board and the CFS agree it is not in the public interest, generally on the grounds of low value, the case may be taken forward through discipline and/or civil recovery routes.

  The Board and the CFS must be prepared to justify all such decisions to the appointed auditor. Breach of trust must be taken into account in these considerations, meaning that being of low value does not automatically preclude a case from being notified to the procurator fiscal. Where there is

doubt as to whether a prima facie case for prosecution exists, the CFS will contact the appropriate procurator fiscal or Crown Office to obtain advice.

In any event, the CFS should be contacted before any overt action is taken which may alert suspects and precipitate the destruction or removal of evidence or the dissipation of assets. This includes taking action to stop a loss or tighten controls.

Where Boards and the CFS are undertaking pro-active exercises in areas of known fraud risk, officers and directors must provide assistance and such data as is required to ensure the success of these operations.

5. THE ACTION PLAN

5.1 The flowcharts in section 5.2 describe the required actions with respect to a reported suspicion of fraud. The flowcharts provide procedures that allow for evidence gathering and collation in a manner that will facilitate informed initial decisions, while ensuring that evidence gathered will be admissible in any possible future criminal or civil actions. Each situation is different, therefore the guidance in the flowcharts will need to be considered carefully in relation to the actual circumstances of each case before action is taken.

Under no circumstances should a member of staff speak or write to representatives of the press, TV or radio, about a suspected fraud without the express authority of the Chief Executive. Guidance to members of the Board's staff who may have suspicions or concerns about possible irregularities including fraud is set out in Section 7 of this document. Care needs to be taken to ensure that nothing is done that could give rise to an action for defamation.

In some cases, e.g. if a major diversion of funds is suspected, speed of response will be crucial to avoid financial loss.

Further commentary on the processes in the flowcharts is provided in Section 5.3.

5.2

CHART 1 - REPORTING FRAUD

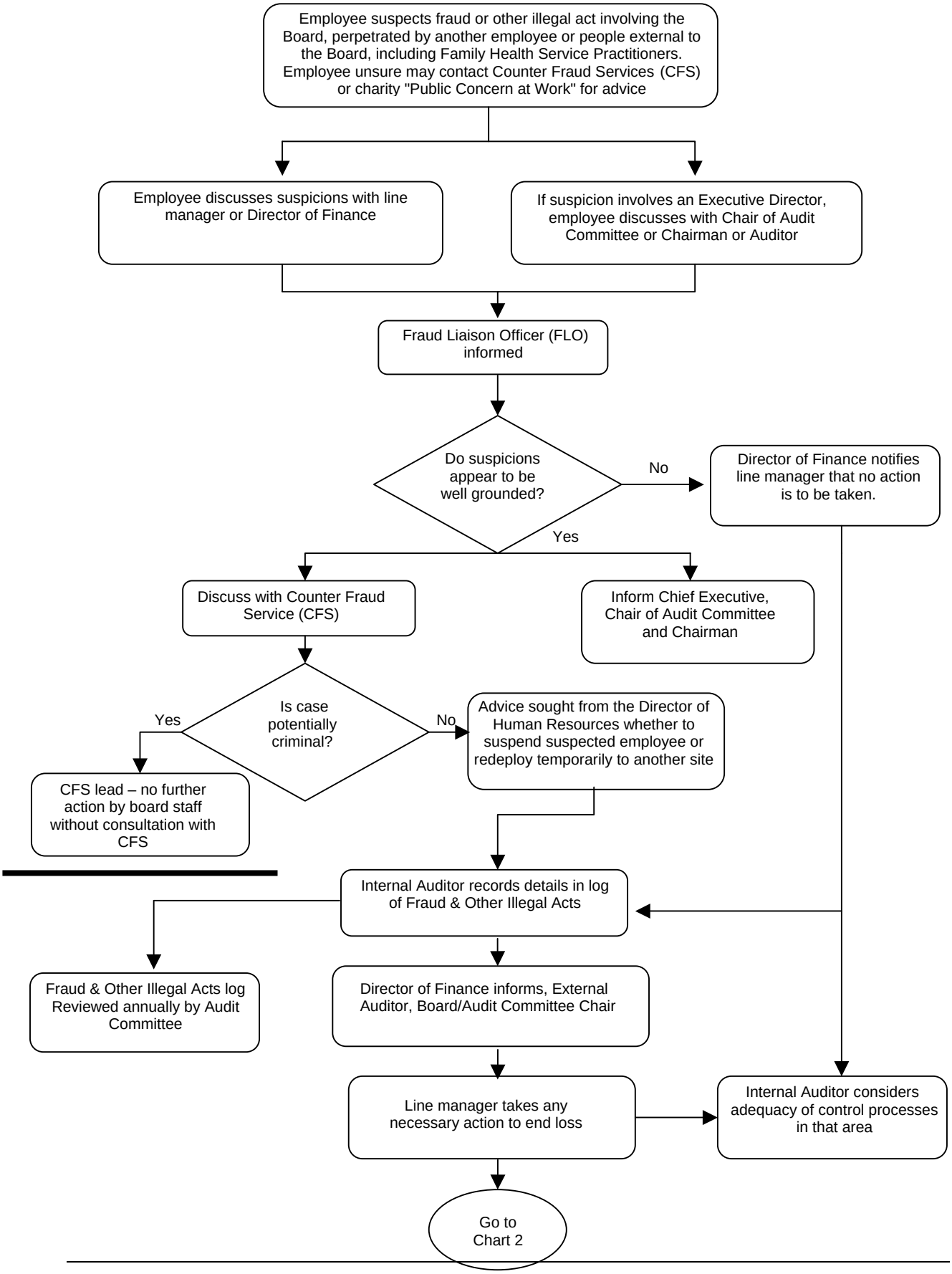

Employee suspects fraud or other illegal act involving the Board, perpetrated by another employee or people external to the Board, including Family Health Service Practitioners. Employee unsure may contact Counter Fraud Services (CFS) or charity "Public Concern at Work" for advice
Employee discusses suspicions with line manager or Director of Finance
If suspicion involves an Executive Director, employee discusses with Chair of Audit Committee or Chairman or Auditor
Fraud Liaison Officer (FLO) informed
Do suspicions appear to be well grounded?
No
Director of Finance notifies line manager that no action is to be taken.
Yes
Discuss with Counter Fraud Service (CFS)
Inform Chief Executive, Chair of Audit Committee and Chairman
Is case potentially criminal?
Yes
No
Advice sought from the Director of Human Resources whether to suspend suspected employee or redeploy temporarily to another site
CFS lead – no further action by board staff without consultation with CFS
Internal Auditor records details in log of Fraud & Other Illegal Acts
Fraud & Other Illegal Acts log Reviewed annually by Audit Committee
Director of Finance informs, External Auditor, Board/Audit Committee Chair
Line manager takes any necessary action to end loss
Internal Auditor considers adequacy of control processes in that area
Go to Chart 2

CHART 2 - MANAGING THE INVESTIGATION

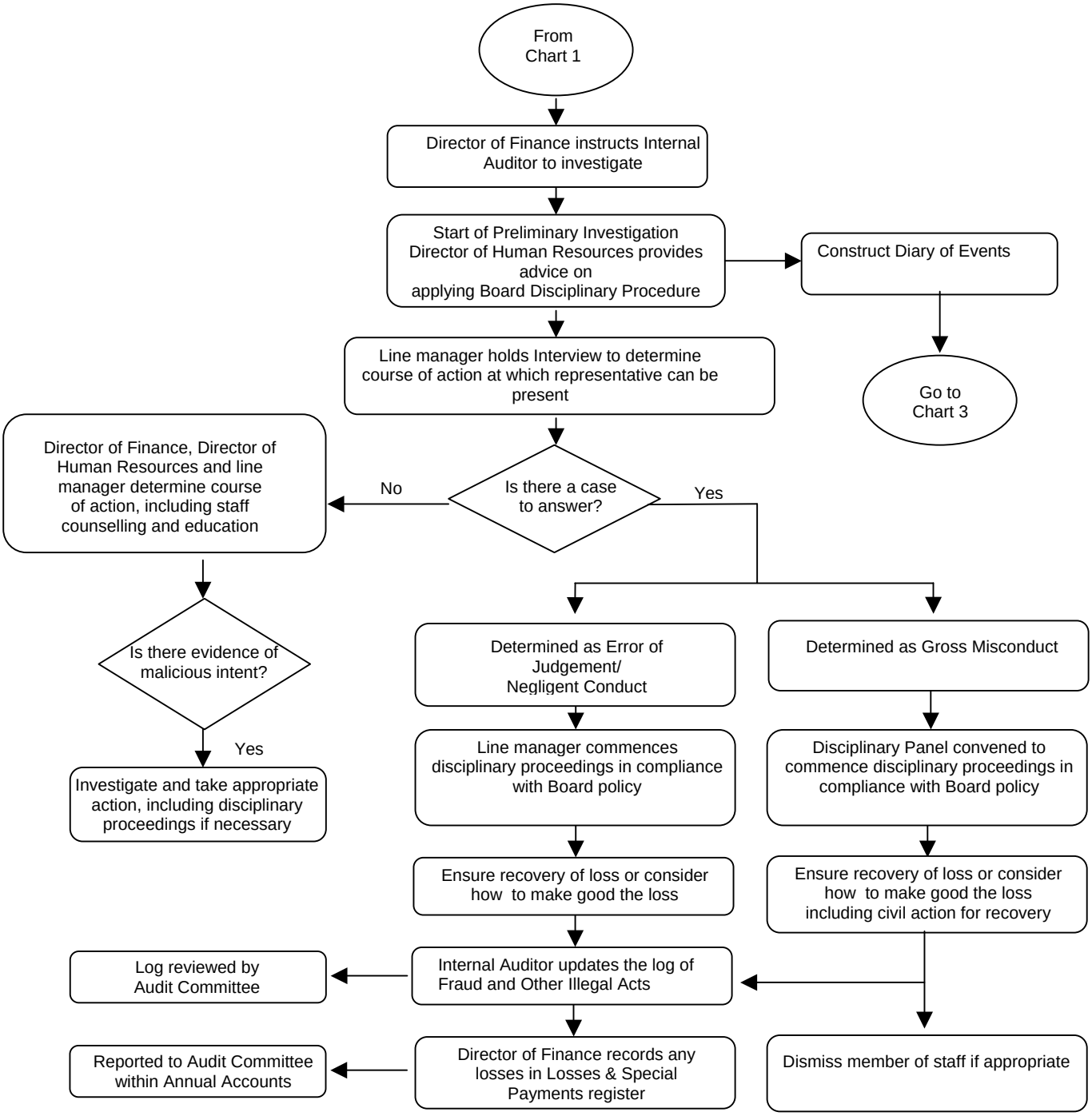
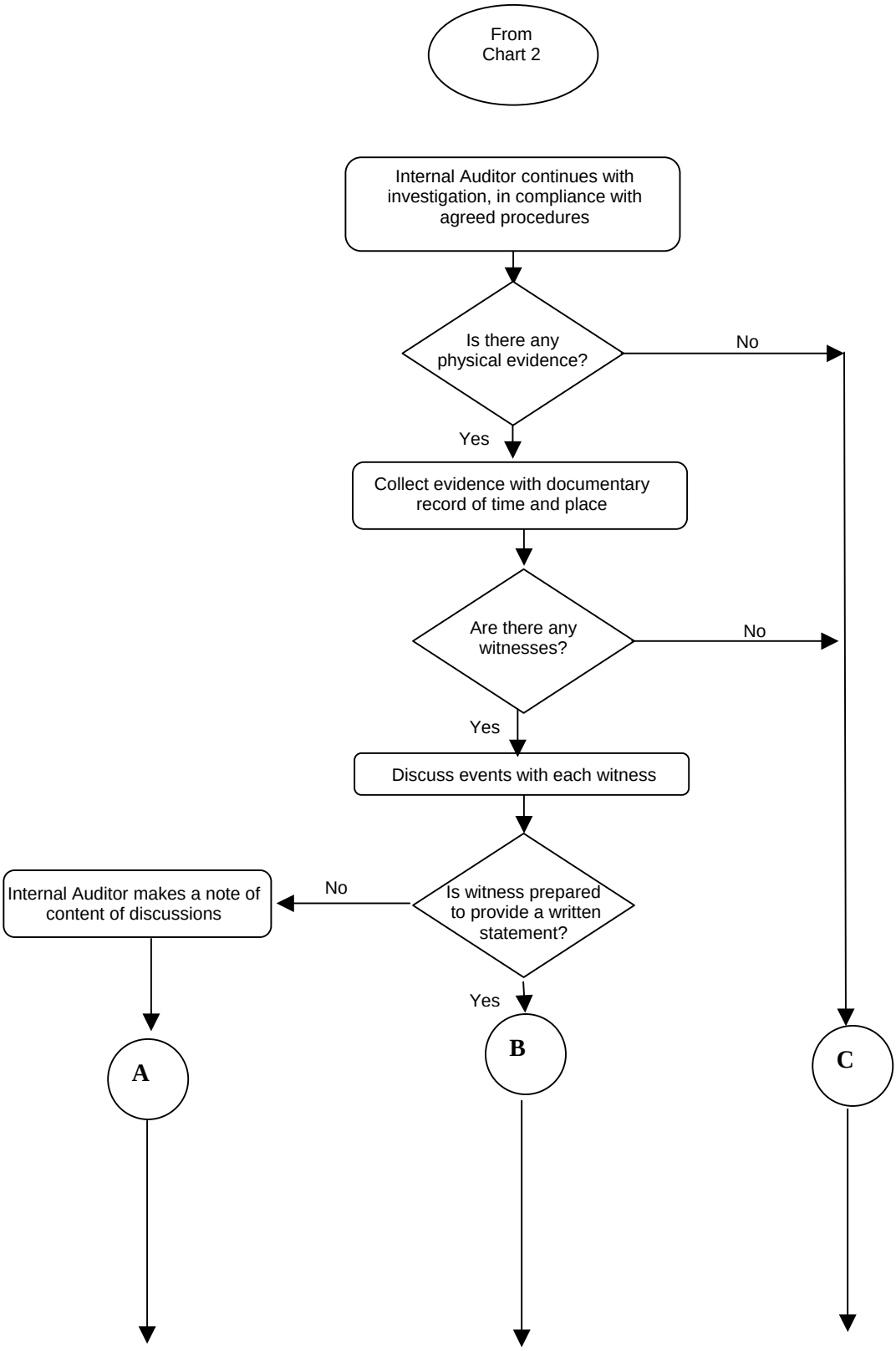

From Chart 1
Director of Finance instructs Internal Auditor to investigate
Start of Preliminary Investigation Director of Human Resources provides advice on applying Board Disciplinary Procedure
Construct Diary of Events
Go to Chart 3
Line manager holds Interview to determine course of action at which representative can be present
Is there a case to answer?
No
Yes
Director of Finance, Director of Human Resources and line manager determine course of action, including staff counselling and education
Is there evidence of malicious intent?
Yes
Investigate and take appropriate action, including disciplinary proceedings if necessary
Determined as Error of Judgement/ Negligent Conduct
Determined as Gross Misconduct
Line manager commences disciplinary proceedings in compliance with Board policy
Disciplinary Panel convened to commence disciplinary proceedings in compliance with Board policy
Ensure recovery of loss or consider how to make good the loss
Ensure recovery of loss or consider how to make good the loss including civil action for recovery
Log reviewed by Audit Committee
Internal Auditor updates the log of Fraud and Other Illegal Acts
Reported to Audit Committee within Annual Accounts
Director of Finance records any losses in Losses & Special Payments register
Dismiss member of staff if appropriate

CHART 3 - GATHERING EVIDENCE FROM WITNESSES



NB. At each stage, if any evidence of criminal intent is uncovered, the investigation must stop and CFS be informed

CHART 3 - GATHERING EVIDENCE FROM WITNESSES (continued)

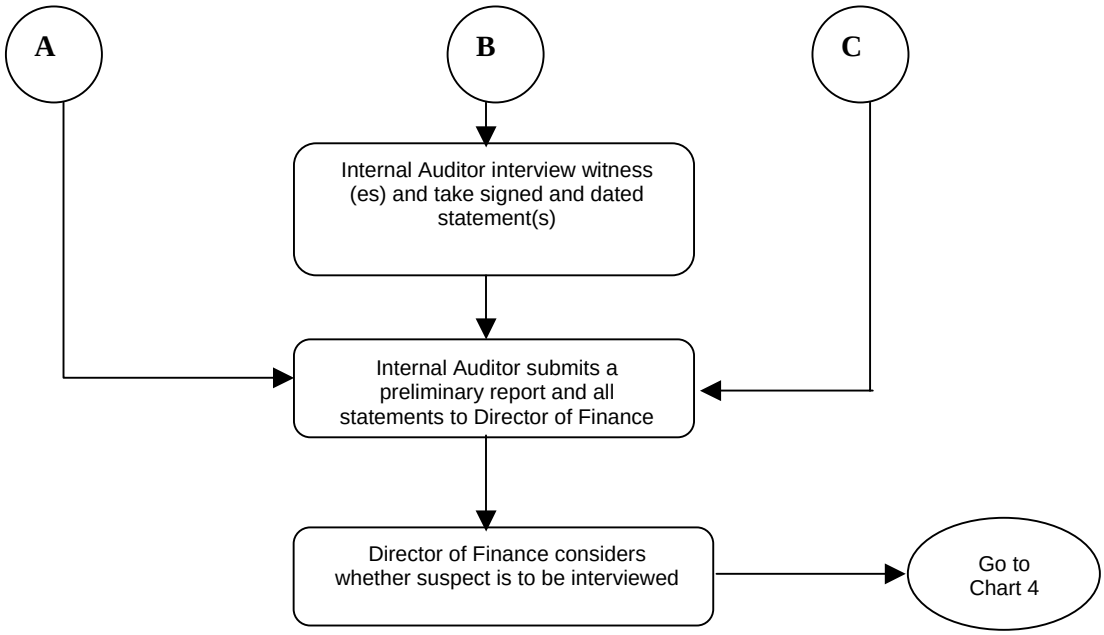
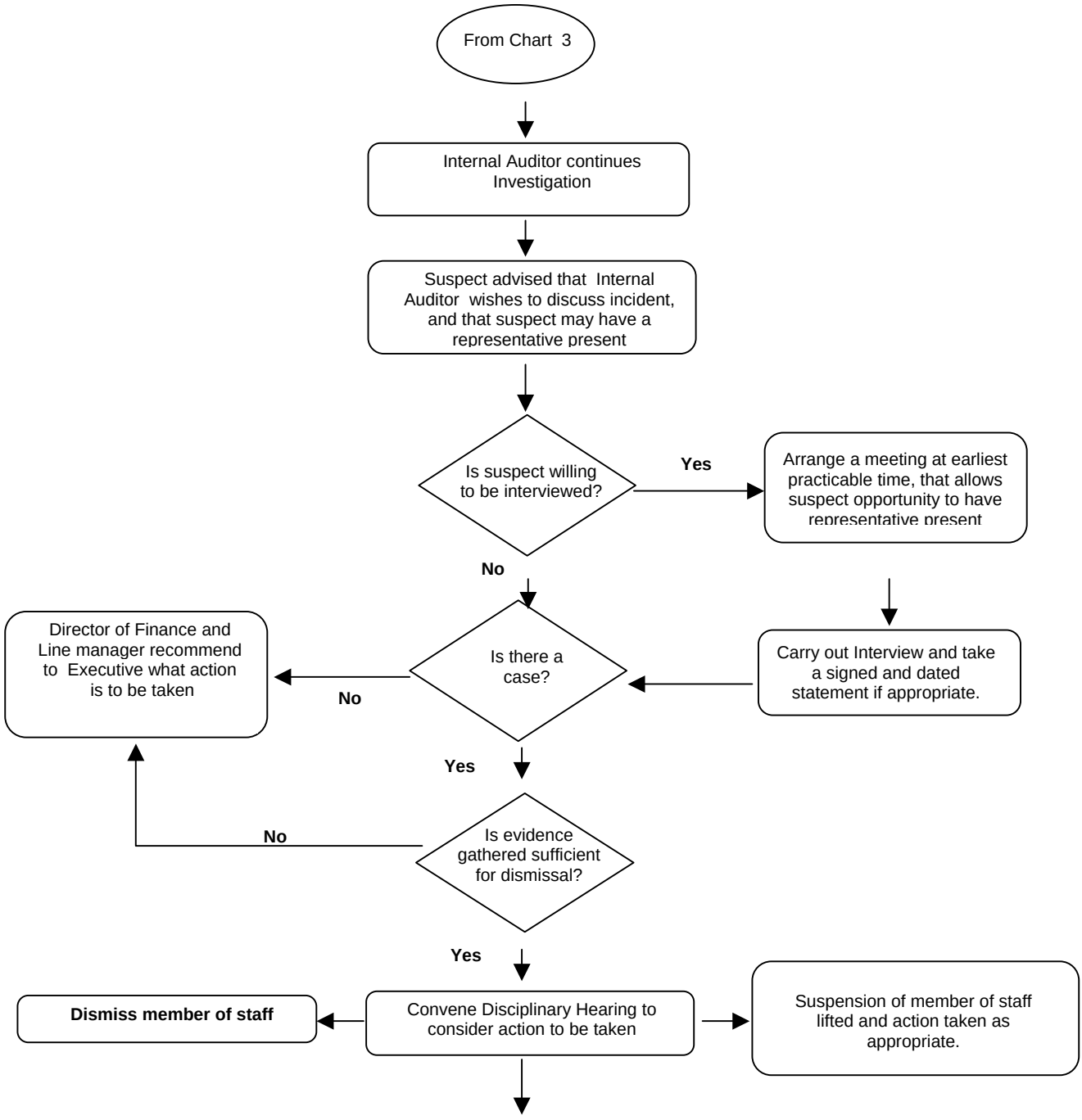
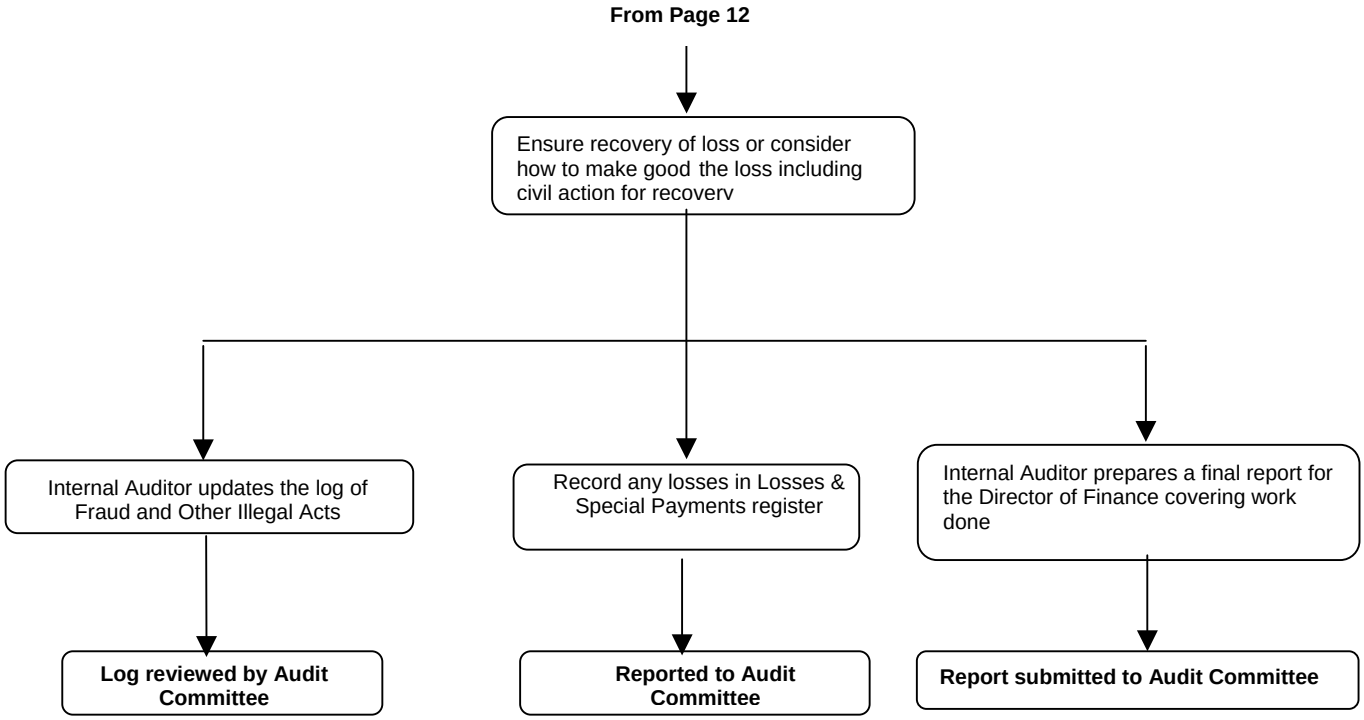

A
B
C
Internal Auditor interview witness (es) and take signed and dated statement(s)
Internal Auditor submits a preliminary report and all statements to Director of Finance
Director of Finance considers whether suspect is to be interviewed
Go to Chart 4

CHART 4 – INTERVIEW PROCEDURE


From Chart 3
Internal Auditor continues Investigation
Suspect advised that Internal Auditor wishes to discuss incident, and that suspect may have a representative present
Is suspect willing to be interviewed?
Yes
Arrange a meeting at earliest practicable time, that allows suspect opportunity to have representative present
No
Is there a case?
No
Director of Finance and Line manager recommend to Executive what action is to be taken
Carry out Interview and take a signed and dated statement if appropriate.
Yes
Is evidence gathered sufficient for dismissal?
No
Yes
Dismiss member of staff
Convene Disciplinary Hearing to consider action to be taken
Suspension of member of staff lifted and action taken as appropriate.

To Page 13

CHART 4 – INTERVIEW PROCEDURE (continued)


From Page 12
Ensure recovery of loss or consider how to make good the loss including civil action for recoverv
Internal Auditor updates the log of Fraud and Other Illegal Acts
Record any losses in Losses & Special Payments register
Internal Auditor prepares a final report for the Director of Finance covering work done
Log reviewed by Audit Committee
Reported to Audit Committee
Report submitted to Audit Committee

5.3 Commentary On The Flowcharts

Chart 1 – Reporting Fraud

5.3.1 Sources of fraud and other irregularities reports

The Board may receive reports of alleged fraud or other irregularities from the following sources: -

employees

patients or the public

primary care contractors

suppliers

police

Counter Fraud Services

Employees

An employee should normally discuss any suspicions with his/her line manager. The employee may also, or instead, discuss the matter confidentially with the Director of Finance. The line manager and the Director of Finance will then agree on the next course of action. If, after consideration, the suspicion seems well founded the Director of Finance will inform the Chief Executive, the Internal Auditor and the reporting employee. The Director of Finance/Fraud Liaison Officer will then consult with CFS to ascertain whether the investigation will proceed on a criminal and/or civil/disciplinary basis.

If an employee suspects his/her line manager, the employee should report the suspicions to someone more senior, or directly to the Director of Finance or may discuss the matter with the Chief Internal Auditor.

An employee may use the CFS Fraud Reporting Line 08000 15 16 28 or report their suspicions (anonymously if desired) through the CFS Website on SHOW (www.show.scot.nhs.uk/fiu). Alternatively the employee may choose instead to contact the charity "Public Concern at Work" on 0207404 6609 or via their website – www.pcaw.co.uk, who would offer the employee advice on how to proceed.

If the suspicion involves an executive director the matter should be reported to the Chair of the Audit Committee or the Chairman of the Board, or to Internal/External Audit.

These reporting routes should be clearly defined in staff induction documentation and well publicised to existing staff.

Patients/Public/Primary Care Contractors/Suppliers/Police/CFS

The Board's policy, in its Standing Financial Instructions, is that all allegations of fraud or other irregularities, from anyone other that a Board employee, should be made in the first instance to the Director of Finance or Chief Internal Auditor. If the suspicion involves an executive director the matter should be reported to the Chair of the Audit Committee or the Chairman of the Board.

The CFS, through its Fraud Reporting Hotline and website, is another conduit for allegations of fraud and other irregularities. The Partnership Agreement makes it clear that any such allegations will be reported to the appropriate Board officer or director within 48 hours of notification to the CFS.

The Director of Finance, Fraud Liaison Officer, or the Chair of the Audit Committee/Chairman of the Board will then consult with CFS to ascertain whether the investigation will proceed on a criminal and/or civil/disciplinary basis.

These reporting routes should be clearly defined in patient information leaflets, contract documentation, and CFS publicity material.

In all such internal and external documentation it should be noted that time may be of the utmost importance to prevent further loss to the Board.

Subject of Allegation

The allegation of fraud or other irregularity may be in respect of: -

an employee

a director of the Board

an independent primary care contractor

a patient

a supplier

Criminal Prosecution

As noted above, in all cases the allegation of fraud or other irregularity will be discussed with CFS. If the case includes in it the potential to be prosecuted criminally, then CFS will lead the investigation.

If the allegation concerns an employee, the CFS will take account of the Board's personnel policies and will consult with the Director of Human Resources in respect of relevant issues including suspension. Consultation in such circumstances is essential; no unilateral action will be taken by the Board, its employees and directors, or the CFS.

If the allegation concerns a director, the CFS will undertake all consultation with the Chair of the Audit Committee/Chairman of the Board and will involve the Director of Human Resources and Chief Internal Auditor, where appropriate.

Where the allegation is in respect of an independent primary care contractor, a patient or a supplier, CFS will undertake all consultation with Director of Finance/ Internal Auditor.

It is expected that the CFS will undertake all investigations, in co-operation with the Board's internal auditors, in respect of primary care contractors, patients and suppliers. The procedures that will be followed by the CFS in all investigations are detailed in the Partnership Agreement.

Discipline or Civil Recovery

Where, following consultation between the Board and the CFS, an investigation limited to disciplinary/civil recovery action appears appropriate; the following sections outline the actions to be followed.

Where the allegation is in respect of an employee, the Director of Finance/Fraud Liaison Officer will seek advice from the Director of Human Resources on whether to suspend a suspected employee or redeploy them temporarily at another site.

Where the allegation is in respect of a director, the Chair of the Audit Committee/Chairman of the Board will involve the Director of Human Resources, where appropriate, in making any decision regarding suspension. When taking action to suspend an employee or director it is important to communicate the reason for taking the action.

The person should be advised that they will receive full pay whilst on suspension, and should not return to the workplace nor contact their colleagues about the allegations until such time as allowed to do so by their employer.

Where, however, due to the nature of the allegation, suspension is deemed inappropriate, e.g. it would alert the suspect and as such may lead to the destruction and removal of evidence, no action to inform the suspect that an investigation was taking place should be taken.

Involvement of the CFS in Disciplinary/Civil Recovery cases

The Board/CFS Partnership Agreement outlines where it may be possible to utilise some of the work carried out by the CFS in a criminal case for disciplinary or civil recovery proceedings. This will always be subject to approval from the relevant procurator fiscal and may require advice from the Central Legal Office.

Subject to those caveats, the work done by CFS, particularly with respect to witness and suspect interviews, could reduce the work required by the Board's investigation team.

Log of Fraud or other Illegal Acts

The Director of Finance/ Internal Auditor will enter details of all reported suspicions, including those dismissed as minor or otherwise not investigated. It will also contain details of actions taken and conclusions reached. The Audit Committee will review the log at least once each year and will report any significant matters to the Board of Directors. A recommended pro-forma log will be agreed nationally.

Internal Communications

The Director of Finance/Fraud Liaison Officer shall inform and consult the Chief Executive at the first opportunity in all cases of suspected fraud or where the incident may lead to adverse publicity. The Director of Finance/ Chief Internal Auditor shall notify the Audit Committee of all frauds discovered and also of all losses arising from any criminal or suspected offences.

Chart 2 – Discipline/Civil Recovery Case - Managing the investigation

5.3.5 Director of Finance to appoint an Investigation Manager

Normally the investigation manager would be the Internal Auditor. The circumstances of each case will dictate who will be involved and when. The following general guidance is intended to assist management in deciding the best course of action.

5.3.6 Diary of Events

The manager overseeing the investigation (referred to hereafter as the Investigation Manager) should initiate a Diary of Events to record the progress of the investigation. A recommended pro-forma Diary will be agreed nationally.

5.3.7 Has a criminal act taken place?

Although in preliminary discussions with the CFS, this question may appear to have been answered, in some cases this question may be asked more than once during an investigation. In practice it may not be obvious that a criminal act has taken place. However, if at any time during the investigation, a criminal act is believed to have occurred the agreed procedure involving the CFS must be invoked.

5.3.8 Internal Investigation

The internal investigation must determine the facts; whether disciplinary action is needed; what can be done to recover any loss; and what may need to be done to improve internal control to prevent the event happening again. In any investigation involving employees there should be close liaison with the Director of Human Resources. (see Appendix V)

5.3.9 Recovering a loss

Where recovering a loss is likely to require a civil action it will be necessary to seek legal advice. Such action should only be progressed under the authority of the Director of Finance.

5.3.10 Disciplinary/Dismissal Procedures

The Board's disciplinary procedures must be followed in any disciplinary action taken by the Board towards an employee (including dismissal). This may involve the Investigation Manager in reporting formally the results of the investigation and recommending a disciplinary hearing to consider the facts.

Chart 3 – Gathering Evidence

5.3.11 The chart cannot cover all the complexities of gathering evidence; each case must be treated according to the circumstances, taking professional advice from the Central Legal Office if necessary.

5.3.12 Physical evidence

Upon taking control of any physical evidence, it is very important that a record is made of the time and place it is taken. If evidence consists of several items, for example many documents, each one should be tagged with a reference number corresponding to the written record. Care with evidence gathering is important as that which may initially be treated as a discipline case, could become a criminal prosecution.

5.3.13 Witnesses

If a witness to the event is prepared to give a written statement, it is best practice for an experienced member of staff to take a chronological record using the witness's own words. The witness must be happy to sign the document as a true record, but the involvement of an independent person usually helps to keep the statement to relevant facts.

5.3.14 Director of Finance to consider if suspect should be interviewed

The Director of Finance will consider the preliminary report of the Investigation Manager and consider if the suspect should be interviewed. In this consideration the Director of Finance may consult others e.g. the Director of Human Resources and the Chief Executive.

Chart 4 – Interview Procedure

5.3.15 Interviewing the Suspect(s)

The Director of Human Resources may if appropriate accompany the

Investigating Manager at interview in order to provide advice on the procedures to be followed. One person should ask the questions and the other should take complete and contemporaneous notes.

The suspect should be advised that he/she is entitled to be accompanied at the interview by a friend or other representative from a Trade Union/Staff Association or work colleague, who may observe proceedings and offer advice where necessary to the interviewee.

Questions should be prepared beforehand, but it will always be important to probe the responses to particular questions by pursuing supplementary points. Leading questions (such as "you do open the post on your own, don't you") should not be asked. Closed questions, which have simple alternative answers, are useful for obtaining specific information. The procedure to be followed during the interview should be explained, including that notes will be taken. It should be made clear the interviewee does not have to answer any question but that if he/she does not, that fact will be recorded in the interview note.

If it is necessary for notes to be written up in a neater and more legible form, this must be done immediately following the interview and signed and dated by the Investigating Manager and other interviewer. The original notes must be retained.

Within 48 hours of the interview, the interviewee should be asked to review the notes, and make any corrections that he/she considers are necessary. The Investigating Manager should then:

- Consecutively number all pages
- Cross through all blank spaces to demonstrate to the interviewee that nothing can be added subsequently
- Sign each page of notes, together with the HR professional providing support
- Enter the time the interview was conducted on the last page of notes

The interviewee should then be invited to sign and date the account of the interview, if he/she thinks it is a fair reflection of proceedings.

Copies of the notes should not normally be made available to the interviewee until the investigation has been completed, and the way forward decided.

It should be remembered that a manager has the right to ask an employee to account for his/her actions in respect of that employment.

If the employee refuses to answer questions on the grounds that he/she might incriminate him/herself, it is his/her right to do so. This should be confirmed. However the employee should also be informed that he/she may still be considered for disciplinary action including dismissal.

If it becomes clear in the course of an interview that the interviewee is likely to have been the perpetrator of a crime, or if he or she admits a criminal act, the interview should be halted at once, and the matter referred to the CFS for action.

Care must be taken to avoid defamation. Where the interviewee makes a statement that conflicts with other evidence, this should be pointed out – to say

"you're lying" could be held to be oppressive.

All interviews must be conducted fairly. In particular comments such as "if you do not tell me the truth you will get the sack" must be avoided.

No form of physical restraint or force should ever be attempted. If, for example it is considered that the suspect may have Board property on his or her person or in his or her vehicle, then the interviewer should request the person to allow a search. If the suspect refuses and attempts to leave, no attempt should be made to stop him or her. The suspect should be advised that his or her non-cooperation will be noted and may result in disciplinary action being taken.

If a criminal offence may have been committed and the person wishes to make a statement, then the CFS must be contacted immediately so that the statement can be made to them.

Offers to resign, or to make restitution for losses should be recorded but should not be accepted during the interview.

Any relevant records that might assist the investigation should be collected. To prevent their destruction, the employee should be accompanied to his or her place of work to collect such documents or personal belongings. Any official property at home should be collected and, depending on the outcome of the interview, it may be necessary to restrict the employee's access to Board's buildings and records.

Please note that control over draft and final reports is crucial if the Board is to avoid the risk of potential libel actions. No report of an investigation or interview is to be made available in the first instance to any person other than the Director of Finance.

The interview should end when:

- No explanation is given (and the person has been given ample opportunity to give one)
- An unsatisfactory explanation is given
- An admission is given
- A satisfactory explanation is given

5.3.16 Termination of the Investigation

The Board investigation should terminate when:

- There is sufficient evidence for dismissal or other appropriate disciplinary action
- The Investigating Manager considers that reasonable steps have been taken to obtain information in support of the allegation, but sufficient evidence has not been produced.

5.3.17 Dismissal of Staff

Under UK employment legislation dismissal must be for a "fair" reason. The manner of dismissal must also be reasonable and the procedure fair. It is therefore important that no employee should be dismissed without close consultation with the Director of Human Resources and in compliance with the Board's disciplinary procedures. In these circumstances the Director of Human Resources will take into consideration guidance provided by the Central Legal Office.

The Director of Human Resource should be consulted about the subsequent provision of references for employees who have been dismissed or who have resigned following suspicions of a fraud.

5.3.18 Losses and Compensations Register

Guidance on losses and special payments is provided in Circulars 1985(GEN)17 and HDL(2002)23.

The delegated limits for approving the writing off of losses and special payments are detailed in the Board's Standing Financial Instructions.

5.4.1 Post investigation review

It will be important for the Divisional Director, in conjunction with the Chief Internal Auditor, to consider the lessons to be learned, e.g. how internal controls can be strengthened. Any lessons learned should be disseminated to the Service through the internal audit network or by using the CFS' bulletins.

5.5 Involving the Counter Fraud Services

Some managers may mistakenly be reluctant to involve the CFS in the belief that:

- they are only interested if the alleged criminal offence is greater than a specific £ value; the CFS are not interested because the potentially complex issues involved render little chance of a successful prosecution; or
- the Board prefers to deal with the incident themselves, in an attempt to minimise attention while implementing dismissal and pursuing recovery through civil action; or
- the CFS want hard evidence before they will pursue investigations, but when it is provided they advise that the rules of evidence have not been complied with; or
- the disciplinary process has to await a CFS investigation and/or prosecution.

Where there is any suggestion that a fraud or other irregularity has been perpetrated the CFS must be involved in any decision regarding the action to be taken.

The CFS through the Communications Manager may be able to advise on how to draft a statement to the staff or the press.

6. The Law and its Remedies

Criminal law may impose sanctions on the accused for causing loss, while civil law may assist the Board to recover its loss.

In Civil law the method of concealment (in the case of fraud) is unlikely to be a key factor in the value of compensation or the drafting of the statement of claim.

Criminal law now allows for the restraint (i.e. freezing) and confiscation of the proceeds of crime, following conviction. CFS, in conjunction with the police and fiscal service, will always press to have the full effect of the Proceeds of Crime Act 2002 applied whenever it is appropriate.

Subject to CFS obtaining approval from the procurator fiscal concerned, there is no reason why the criminal prosecution and civil process cannot be taken at the same time if the evidence supports such action.

6.1 Civil Law Remedies

The following is a brief description of some of the commoner civil law remedies. It is not comprehensive and legal advice should be sought from the Central Legal Office before action is taken.

6.1.1 Monies had and received

The claim will refer to funds of the pursuer, which have been 'had and received' by the defender at the pursuer's expense - and will seek their recovery.

6.1.2 Interest

The pursuer may be entitled to interest on the amount lost, and there are claims for interest under court rules and statute.

6.1.3 Interdict, Arrestment or Inhibition

In some cases a court order can be used to freeze the assets of a person suspected of fraud or a person who has been convicted of a criminal offence in respect of their fraudulent activity. These procedures can be used to prevent the disposal of assets of the accused or defender.

6.1.4 Damages for deceit

A defender may become liable to the pursuer for damages arising out of the act, and if the pursuer can establish this liability he is entitled to be put back into the

position that he would have been in if the act had not been committed. If successful, this claim may result in the award of damages beyond mere recovery of assets stolen.

7. GUIDANCE TO STAFF ON FRAUD

This section is intended for distribution as a general instruction to staff.

The Board of Directors approves this document. It sets out the Board's policy on fraud and gives advice to employees in dealing with fraud or suspected fraud or other illegal acts involving dishonesty or damage to Board property.

All staff have a responsibility to protect the assets of the Board.

7.1 Public Service Values

The three fundamental public service values underpinning NHS and all public sector work, specified by the NHS Code of Conduct, are:

Accountability:	Everything done by those who work in the organisation must be able to withstand public and parliamentary scrutiny.
Probity:	Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.
Openness:	The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

7.2 The Board's Policy

The Board is absolutely committed to maintaining an honest, open and well-intentioned atmosphere within the organisation, so as best to fulfil the objectives of the Board and of the NHS. It is therefore committed to the elimination of any fraud within the Board, to the rigorous investigation of any such cases, and where fraud or other criminal act is proven to ensure that those perpetrating fraud are appropriately dealt with. The Board will also take appropriate steps to recover any assets lost as a result of fraud.

The Board wishes to encourage anyone having suspicions of fraud to report them. The Board's policy, which will be rigorously enforced, is that no employee should suffer as a result of reporting suspicions held in good faith.

The Board has therefore set in place procedures (in the form of Standing Orders, Standing Financial Instructions and procedure notes) designed to minimise the likelihood of the Board being a victim of fraud, a response plan to be followed in the event suspected fraud being reported, and these guidance notes issued to all staff.

7.3 Instructions To Staff

You should be assured that there will be no recriminations against staff who report suspicions held in good faith. Victimising or deterring staff from reporting concerns is a serious disciplinary matter. Any contravention of this policy should be reported to the Chief Executive or Chair of the Audit Committee. Equally however, abuse of the process by raising malicious allegations would, if proven, be regarded as a disciplinary matter.

If you believe you have good reason to suspect a colleague, patient or other person of a fraud or an offence involving the Board or a serious infringement of Board or NHS rules you should discuss it in the first place with your manager.

Examples could include:

- theft of Board property
- abuse of Board property
- deception or falsification of records (e.g.: fraudulent time or expense claims)

If you have suspicions about the actions of your manager, such that you suspect that manager of involvement in the fraud, then you have a choice of:

- going to the next more senior person in your department or directorate
- discussing the matter confidentially and anonymously with the Chief Internal Auditor
- reporting the matter directly to the Director of Finance

Further choices for staff are:

- you may use the CFS Fraud Reporting Line 08000 15 16 28 or report their suspicions (anonymously if desired) through the CFS Website on SHOW. (www.show.scot.nhs.uk/fiu)

- if you are concerned about speaking to another member of staff you could ask for advice first from the charity "Public Concern at Work" telephone 0207 404 6609. They can provide independent and confidential advice to you.

If you and your manager or the Chief Internal Auditor decide between you that your suspicion may be justified, your manager or the Chief Internal Auditor will report the matter to the Director of Finance and Performance Review. The Board will then follow the **Fraud Action Plan** to investigate and take appropriate action.

Under no circumstances should staff speak to representatives of the press, radio, TV or other third party unless expressly authorised by the Chief Executive.

Please be aware that time may be of the utmost importance to ensure that the Board does not continue to suffer a loss.

7.4 Your cooperation in this matter is appreciated. Relevant contact points are as follows:

Director of Finance

Executive

Internal Auditor

Appointed Auditor

Counter Fraud Services

(SUGGESTED) STANDING FINANCIAL INSTRUCTIONS

SUSPECTED THEFT, FRAUD & OTHER IRREGULARITIES

Introduction

16.01 The following procedures should be followed, as a minimum, in cases of suspected theft, fraud, embezzlement, corruption or other financial irregularities to comply with Scottish Home and Health Department Circular No HDL(2002)23. This procedure also applies to any non-public funds.

Theft, Fraud , Embezzlement, Corruption and Other Financial Irregularities

16.02 The Chief Executive has the responsibility to designate an officer within the Board with specific responsibility for co-ordinating action where there are reasonable grounds for believing that an item of property, including cash, has been stolen.

16.03 It is the designated officer's responsibility to inform as he deems appropriate the police, the Counter Fraud Services (CFS), the appropriate director, the Appointed Auditor, and the Chief Internal Auditor where such an occurrence is suspected.

16.04 Where any officer of the Board has grounds to suspect that any of the above activities has occurred, his or her local manager should be notified without delay. Local managers should in turn immediately notify the Board's Director of Finance, who should ensure consultation with the CFS, normally by the Chief Internal Auditor. It is essential that preliminary enquiries are carried out in strict confidence and with as much speed as possible.

16.05 If, in exceptional circumstances, the Director of Finance and the Chief Internal Auditor are unavailable the local manager will report the circumstances to the Chief Executive who will be responsible for informing the CFS. As soon as possible thereafter the Director of Finance should be advised of the situation.

16.06 Where preliminary investigations suggest that *prima facie* grounds exist for believing that a criminal offence has been committed, the CFS will undertake the investigation, on behalf of, and in co-operation with, the Board. At all stages the Director of Finance and the Chief Internal Auditor will be kept informed of developments on such cases. All referrals to the CFS must also be copied to the Appointed Auditor.

Remedial action

16.07 As with all categories of loss, once the circumstances of a case are known the Director of Finance will require to take immediate steps to ensure that so far as possible these do not recur. However, no such action will be taken if it would prove prejudicial to the effective prosecution of the case. It will be necessary to identify any defects in the control systems, which may have enabled the initial loss to occur,

and to decide on any measures to prevent recurrence.

Reporting to the SEHD

16.08 While normally there is no requirement to report individual cases to the SEHD there may be occasions where the nature of scale of the alleged offence or the position of the person or persons involved, could give rise to national or local controversy and publicity. Moreover, there may be cases where the alleged fraud appears to have been of a particularly ingenious nature or where it concerns an organisation with which other health sector bodies may also have dealings. In all such cases, the SEHD must be notified of the main circumstance of the case at the same time as an approach is made to the CFS.

Responses to Press Enquiries

16.09 Where the publicity surrounding a particular case of alleged financial irregularity attracts enquiries from the press or other media, the Chief Executive should ensure that the relevant officials are fully aware of the importance of avoiding issuing any statements, which may be regarded as prejudicial to the outcome of criminal proceedings.

Appendix VIII

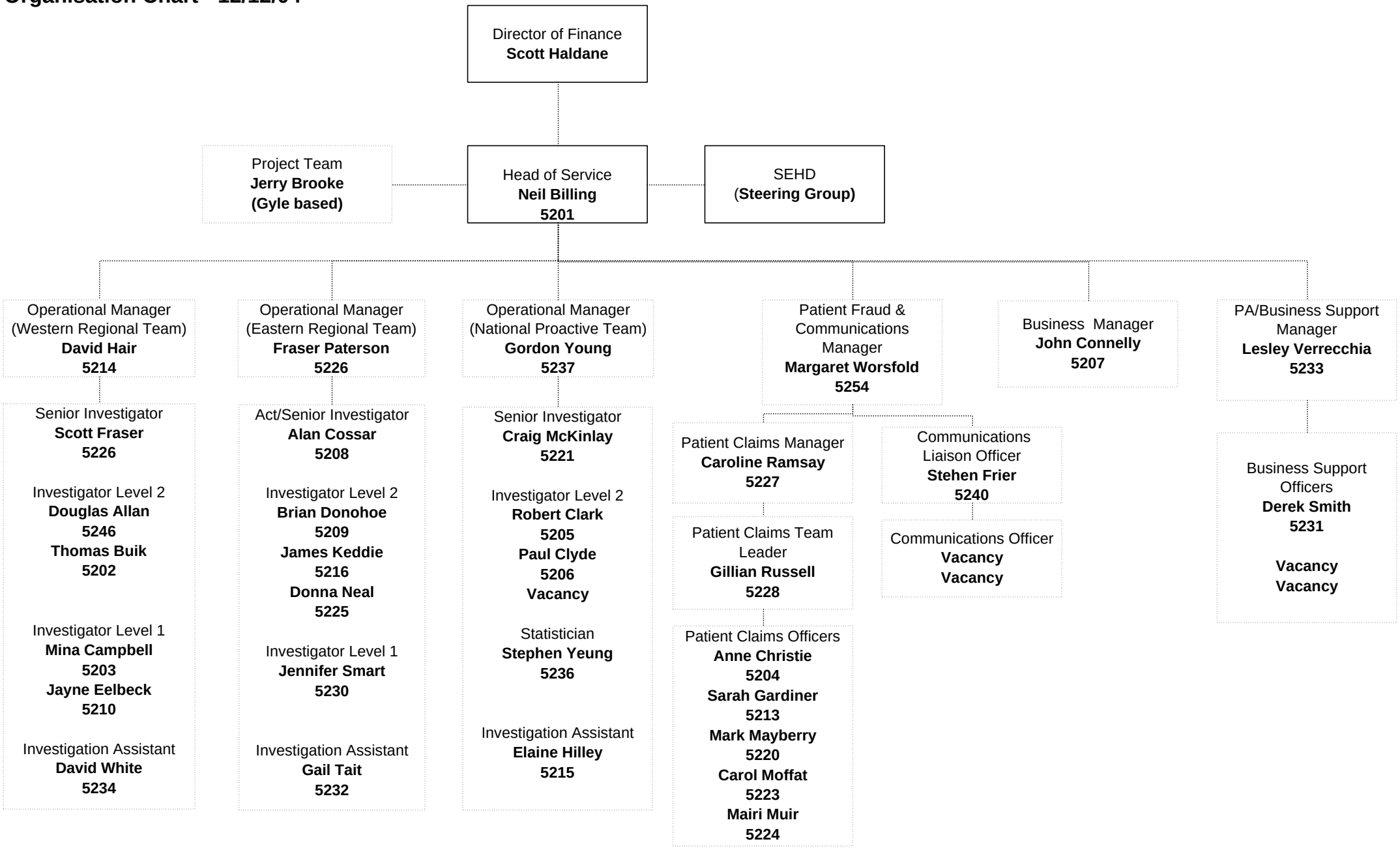
NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

ORGANISATION CHART

NHSScotland Counter Fraud Services

Organisation Chart - 12/12/04



Earlston House Main Switchboard Number 01506 70**** - * represents each individual 4 digit Extension Number

E-mail address - forename.surname@psd.csa.scot.nhs.uk

Appendix IX

NHSSCOTLAND
COUNTER FRAUD SERVICES

National Services Scotland

FRAUD LIAISON OFFICER – Roles and Responsibilities

FRAUD LIAISON OFFICER – Roles and Responsibilities

In fulfilling the requirements of the Partnership Agreement, the roles and responsibilities of the Fraud Liaison Officer will include:

1. Acting as first point of contact in all communications between CFS and their organisation.

2. Receiving information about suspected fraud within their organisation from staff or others and passing such information to CFS.

3. Notifying CFS of any suspected case of fraud within two working days of establishing the facts that give reasonable grounds for suspecting fraud.

4. Developing distribution network(s) within their organisation for receipt of information and quarterly/ad hoc reports from the CFS.

5. Ensuring that their Audit Committee and relevant Appointed Auditor is informed of the status of all current investigations.

6. Liaison with their organisational media officer, NHS National Services Scotland media officer and the CFS regarding any press enquiry about a fraud case.

7. Participation in a national risk assessment on the likelihood of fraud occurring within different health service disciplines.

8. Participation in national discussions with other Fraud Liaison Officers and the CFS on the development and revision of operational protocols.

9. Contributing to the fraud intelligence network through the supply of local knowledge.

10. Assisting CFS in obtaining locally held records for investigations into suspected fraud.

11. Nomination of (and notification to CFS) of a designated deputy.